

**FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF MONTEREY, CALIFORNIA**

**AND**

**TCI CABLEVISION OF CALIFORNIA, INC.**

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## **FRANCHISE AGREEMENT**

### **SECTION 1. GRANT OF FRANCHISE**

1.1 **Grant.** The City of Monterey, California (hereinafter called the "City" or "Monterey") enters into this agreement with TCI Cablevision of California, Inc. (hereinafter "Grantee") for the provision of cable communications service within its boundaries for the benefit of the residents of the City and to ensure that Grantee meets the cable-related needs and interests of Monterey. The City hereby grants to Grantee a non-exclusive Franchise to engage in the business of operating a cable system and providing cable service in the City of Monterey, and for that purpose to use the streets and public ways to install, construct, repair, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to said cable communication system. In addition, so to use, operate and provide similar facilities or properties rented or leased from a public utility franchised or permitted to do business in the City of Monterey, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

1.2 **Term.** The Franchise granted hereby shall expire ten (10) years after its effective date unless extended pursuant to Section 22.2, lawfully terminated in accordance with its terms or other applicable law, or otherwise altered in accordance with Section 22.2.

1.3 **Effective Date.** This Franchise shall become effective on the thirty-first (31st) day following its adoption, provided that prior to that date the Grantee: (a) accepts in writing this Franchise Agreement; and (b) provide all warranties, proofs, and other documents required by the Franchise.

1.4 **Franchise Area.** The Franchise area for which this Franchise is granted consists of all areas located within the Monterey City limits as they exist on the effective date of the Franchise, as well as any areas which are annexed by the City during the term of this agreement. Except the Franchise area shall not include property under the franchising authority of the U.S. Department of Defense.

1.5 **Effect of Acceptance.** By accepting the Franchise, the Grantee: (a) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (b) agrees that it will not oppose intervention by the City in any proceeding affecting the enforcement of its rights under this franchise; (c) accepts and agrees to each and every provision contained herein; and (d) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees that it will not raise any claim or defense to the contrary.

1.6 Rights Reserved.

A. The City reserves its rights under its lawful police powers, and nothing in this Franchise shall be read to limit those rights. The City, among other things, does not waive requirements of various codes, ordinances, and resolutions, including zoning codes and codes regarding building permits and fees, or time or manner of construction. Any fees or charges paid, so long as generally applicable and not discriminatory, shall be paid in addition to the Franchise fee required under this Franchise.

B. Acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or implied, by the Grantee of any constitutional or legal right not known at the time of acceptance of the Franchise which the Grantee may be subsequently determined to have, either by subsequent legislation or court decisions.

1.7 Grantee Compliance. The Grantee agrees to and is hereby bound by all the terms, conditions, and provisions of the Ordinance of the City Council of the City of Monterey Establishing Cable Communication Franchise Procedures, Terms and Enforcement Measures (hereinafter "Enabling Ordinance" or "Monterey Enabling Ordinance") and all other existing and future ordinances and regulations of the City of general applicability, including but not limited to matters such as zoning ordinances, and ordinances establishing construction standards or procedures for use of the streets.

1.8 Legal Qualifications. The Grantee affirms that it meets all the legal qualifications set forth in Section 8 of the Enabling Ordinance and in applicable Federal law.

SECTION 2. SHORT TITLE AND DEFINITIONS

2.1 This Franchise Agreement shall be known and be cited as the "Monterey and TCI Cablevision of California, Inc. Franchise Agreement." Notwithstanding any of the definitions set forth in the Monterey Enabling Ordinance, the following terms, phrases, words and their derivations shall have the specific meaning ascribed to them below. 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 words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meanings set forth in the Enabling Ordinance, or if not defined therein, the meaning set forth in the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended, and, if not defined therein, shall be given their common and ordinary meaning.

**“Affiliate”** means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, a Franchisee.

**“Basic Service”** means the lowest priced service tier regularly provided to all Subscribers that includes the retransmission of local television broadcast signals. It shall include all public, educational, and government (“PEG”) access Channels.

**“Cable Act”** collectively means the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, and as it may be further amended from time to time.

**“Cable Services”** means (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**“Cable System”** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (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 Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in 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 Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

**“City” or “Monterey”** shall have the meaning set forth in Section 1.1.

**“Control”** means actual working control in whatever manner exercised.

**“Enabling Ordinance”** means the Ordinance of the City Council of the City of Monterey Establishing Cable Communication Franchise Procedures, Terms and Enforcement Measures.

**“FCC”** means the Federal Communications Commission, or successor governmental entity thereto.

**“Franchise Agreement”** or **“Agreement”** or **“Franchise”** shall refer to this agreement by and between the City and the Grantee which shall represent the

authorization issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.

**“Franchise Area”** shall have the meaning set forth in Section 1.4, above.

**“Franchising Authority”** means the City of Monterey or the lawful successor, transferee, or assignee thereof.

**“Grantee”** means TCI Cablevision of California, Inc., the person to whom this Cable Franchise is granted by the City Council or its lawful and permitted successors, assigns, and transferees.

**“Normal Business Hours”** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and some weekend hours.

**“Normal Operating Conditions”** means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinary within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

**“Other Programming Service”** means information that a cable operator makes available to all subscribers generally.

### SECTION 3. FRANCHISE -- LIMITATIONS

3.1 The Franchise does not confer rights other than as provided by the Enabling Ordinance and this Franchise Agreement, or as mandated by federal or state law.

3.2 No privilege or exemption is granted or conferred except those specifically prescribed herein.

3.3 There is hereby reserved to the City every right and power which is reserved or provided by the Enabling Ordinance, or any other ordinance of the City of general applicability. The Grantee, by its acceptance of the Franchise, agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of such right or power heretofore or hereafter enacted or established.

3.4 The City Council may delegate its authority under this Franchise as permitted by state law and City Charter.

3.5 To the extent permitted by applicable law, the Grantee shall have no recourse against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Franchise Agreement or because of its lawful enforcement or non-enforcement except if such loss, cost, expense, or damage is due solely to the gross negligence or willful misconduct of the City or its employees.

3.6 The Grantee shall at all times be subject to the exercise of the police power of the City, and its other lawful authority.

3.7 The provisions of this Franchise Agreement will be liberally construed in favor of the City in order to promote the public interest.

3.8 Nothing in this Franchise Agreement shall be read to create an expectancy of renewal or to in any respect entitle the Grantee to renewal or extension of this Franchise, except as may be expressly required by applicable law.

3.9 Any privilege claimed under any Franchise by the Grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property, subject to Section 14 of the Enabling Ordinance.

3.10 An independent contractor does not need a Franchise to install a cable system for the Grantee.

SECTION 4. NON-EXCLUSIVE FRANCHISE AND COMPETITION ENCOURAGED

4.1 This Franchise Agreement and the right it grants to use and occupy the public right of way is not exclusive and does not explicitly or implicitly preclude the issuance of other franchises to operate cable systems or other communications systems within the City, affect the City's right to authorize use of the public right of way by other persons to operate cable systems or other communications systems or for other purposes as it determines appropriate, or affect the City's right to itself to construct, operate or maintain a cable system or other communications system, with or without a Franchise.

4.2 In the event that, after the effective date of a Franchise, the City grants a franchise to another person or persons to use and occupy the public right of way for the purpose of operating a cable system or other communications system that is comparable in scope to a Franchise, the material terms and conditions of such additional franchise or franchises shall be reasonably comparable to the materials

terms and conditions of the Franchise, taking into consideration all of the circumstances in existence at the time such additional franchise or franchises are granted, including without limitation any applicable legal limitations on the City's regulatory authority. In addition, the Grantee shall have all rights under California Government Code 53066.3.

## SECTION 5. NO WAIVER

5.1 The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

5.2 Waiver of a breach of this Franchise Agreement or the Enabling Ordinance is not a waiver of any similar or different breach. Neither the granting of this Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

## SECTION 6. CUSTOMER PROTECTION

6.1 Customer Protection. The Grantee agrees to meet or exceed the requirements for customer protection established by the City and contained in Exhibit A of the Enabling Ordinance, which is hereby incorporated into this Franchise Agreement by reference, and the Grantee agrees that it shall abide by the terms and conditions therein or be subject to the remedies set forth in Sections 16 through 18 of this Agreement. Further, consistent with Sections 15.1 and 15.6 of the Enabling Ordinance and subject to applicable law, Grantee agrees: 1) to be bound by customer protection requirements adopted after this Franchise Agreement is issued; and 2) agrees to amendments to those standards made through that section of the Enabling Ordinance.

6.2 Privacy. In Addition to the requirements of Section 15.5 of the Enabling Ordinance, the City and the Grantee shall maintain diligent vigilance with regard to possible abuses of the right of privacy of any subscriber, programmer, or any other person resulting from any device or signal associated with the cable system.

### 6.3 Sale of Subscriber Lists and Personalized Data.

A. The Grantee shall be subject to the provisions of federal law regarding limitations on the Grantee's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy.

B. Nothing in this section shall be read to limit the City's right to adopt other consumer/customer protection laws.

### 6.4 Maintenance and Complaints.

A. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

B. Written complaints concerning billing, employee courtesy, programming, safety, or the Grantee's operational policies, as well as all other complaints, including complaints about outages, signal quality, and service disruptions, shall be recorded. The Grantee will maintain records of complaints for three (3) years. Copies of the complaint records shall be provided to the City on request, subject to compliance with state or federal privacy laws.

C. The Grantee shall maintain a repair force of technicians sufficient to comply with this Franchise and the City's Customer Service Standards under normal operating conditions and to respond to subscriber complaints, loss of service, or requests for service. The Grantee shall have in place at all times the equipment necessary to locate and correct cable system malfunctions.

D. All subscribers and members of the general public in the City may direct complaints and inquiries regarding the Grantee's service or performance to the City. Upon the request of a complaining party or the Grantee, the City may act as a board of review of a complaint or dispute, and recommend action for resolution.

E. In the event a complaint or dispute directed to it is determined by the City to be a potential violation of the Enabling Ordinance or this Franchise Agreement, and after written notification to the Grantee of that determination, the City may exercise any of its other rights and remedies under the Franchise.

### 6.5 Non-discrimination and Equal Employment Opportunity.

A. Throughout the term of this Franchise, the Grantee shall fully comply with the equal employment opportunity requirements of federal, state, and local law and, in particular, FCC rules and regulations relating thereto. Upon request by the City, the Grantee shall furnish the City a copy of the Grantee's annual statistical report filed with the FCC, along with proof of the Grantee's annual certification of compliance.

The Grantee shall, within a reasonable period of time, notify the City in the event the Grantee is at any time determined by the FCC not to be in compliance with said FCC rules or regulations.

B. The Grantee shall not, in its rates or charges, or in the availability of the services or facilities of its cable system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor shall the Grantee subject any such persons or group of persons to any undue prejudice or any disadvantage. Provided however, that the Grantee may offer temporary, promotional discounts in order to attract or maintain subscribers provided that such discounts are offered on a non-discriminatory basis to similar classes or types of subscribers throughout the Franchise Area. The Grantee shall not deny, delay, or otherwise burden service or discriminate against subscribers within its franchise area on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual preference, physical or mental disability, or political affiliation, except for discounts for the economically disadvantaged elderly that are applied in a uniform and consistent manner. Subject to FCC rules and regulations, this section shall not prohibit the Grantee from publishing different rates for different classes of subscribers, so long as the rates are identical for every subscriber in each class.

C. The Grantee shall not deny cable service to any group of potential subscribers because of the income of the residents of the area in which the group resides.

D. The Grantee shall ensure that its services are accessible, as far as reasonably practical, to people with disabilities. Subject to applicable state and federal laws, all programming received by the Grantee with closed-captioning shall be retransmitted by the cable system including the closed-caption signal.

6.6 Parental Control Device. Upon request, the Grantee shall provide parental control devices to any subscriber.

## SECTION 7. SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

### 7.1 Cable System Design and Functionality

#### A. System Design.

Grantee shall upgrade or rebuild its cable system in the City in a manner which will include the following requirements:

1. The System will use a fiber to the neighborhood node architecture.

2. The System will serve no more than an average of 1,600-1,800 subscribers per fiber node.
3. The number of fibers per node shall be equal to two (2) fibers per six hundred (600) homes passed but no less than four (4) and no more than ten (10) fibers. The number of fibers should be rounded up to the next higher even value if the number of homes passed exceeds a multiple of 600, not to exceed ten (10) fibers.
4. All active and passive electronics replaced or added after the effective date of this franchise will be 550 MHz capable equipment, or equipment of higher bandwidth.
5. Two-way activated capacity capable of supporting two-way high speed Internet access via the Cable System will be activated upon completion of the system upgrade.
6. The headend shall have 24-hour back up power supplies. Each node shall have three-hour rated back up and hub sites and optical transfer nodes shall have six-hour backup power supplies. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power; to revert automatically to a standby mode when alternating current power returns; and so that it complies with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line so as to prevent injury to any person. Power to the nodes will be monitored remotely.

B. System Functionality.

1. As rebuilt or upgraded and maintained, the Cable System must have reliability comparable to the reliability of those cable systems whose initial construction or rebuild was completed after 1998.
2. As designed, rebuilt, or upgraded and as maintained, the Cable System must be capable of being segmented to serve four hundred fifty (450) subscriber homes per node without additional fiber construction. In order to address subscriber demand for interactive services, the Grantee shall provide a minimum of 200 kbps per subscriber of interactive services

in the downstream direction and 66 kbps per subscriber of interactive services in the upstream direction.

3. As designed, upgraded and/or rebuilt and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet FCC technical quality standards regardless of the particular manner in which the signal is transmitted. Grantee shall comply with its internal digital video standards until such time that the FCC adopts digital video standards. When the FCC adopts digital video standards, all digital programming must comply with the FCC standards. If the digital video on the Monterey system does not comply with FCC digital video standards in two sets of FCC proof-of-performance tests, the City may trigger the reopener language in Section 22.2 of this Agreement and pursue all legal remedies available.
4. Upon completion of the upgrade, all facilities and equipment will be installed (except customer premises equipment) so that the two-way active capability required by above in Section 7.1.A.4. is fully ready to operate upon Subscriber request.
5. Equipment shall be installed at the headend to allow the Grantee to cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG access) are retransmitted in those same formats. In the case of FM radio transmission, the above specifications, where applicable, shall apply.
6. Upon completion of the upgrade, Grantee will deliver at least seventy-eight (78) analog and digital channels of video programming services to Subscribers. Until such time as it is technologically and economically feasible to offer the basic tier in digitally compressed form, the Grantee shall provide at least the basic tier of the channels on the cable system in analog form. All additional channels may be

digital. The compression ratio of the digital channels shall be either (a) the Grantee's internal standard or (b) the FCC's standard, whichever is more stringent.

C. Timeline for Completion of Upgrade. The construction required under this Section 7.1.A - B shall be completed no later than twenty-four (24) months after the effective date of this Franchise. The City shall grant reasonable extensions of time to complete construction in particular areas of the City if, prior to the scheduled time for completion, the Grantee shows that, notwithstanding its due diligence, it has been unable to extend service to a specified area because the acts or omissions of a third party (not including the Grantee's subcontractors or agents) have caused a delay in construction beyond delays reasonably expected during the course of an upgrade or rebuild, and the Grantee proposes a reasonable alternative deadline for extension of service to that area.

D. Digital Compression Added. Within nine (9) months of the effective date of this franchise, the Grantee shall upgrade its system by adding digital compression capability to the cable system. As a result of the addition of digital compression to the system, thirty-six (36) additional video channels and ten (10) additional audio/music channels shall be provided.

E. The Grantee shall install, replace as necessary, and maintain a dedicated bi-directional link that conforms to EIA RS-250 medium haul transmission standards between the access center and the headend. The link shall be completed within twelve (12) months of the effective date of the Franchise, or the date the access center is completed, whichever is later. The dedicated bi-directional link shall be designed so that the access center can: (a) send signals to the headend on multiple channels simultaneously (b) receive signals from other locations on multiple channels simultaneously (c) remotely route signals originated at the access center or at other locations onto any access or institutional use channels on the cable system; and (d) otherwise control the signals to allow for smooth breaks, transitions, and insertion of station IDs and other material. The Grantee shall provide plant, headend, and access center equipment necessary to transport the audio and video signals from the access center to the headend for distribution over the cable system which may include, but not be limited to, laser transmitters, modulators, processors, and switchers.

F. The Grantee shall install, replace as necessary, and maintain a bi-directional link that conforms to EIA RS-250 medium haul transmission standards and all cable plant and headend equipment required to make it operable so that City Hall (specifically City Council Chambers) will be able to send signals to the Access Center or other locations on the cable system using a bi-directional link. The Grantee is obligated to provide a total of one (1) fixed laser transmitter/receiver, and one (1) channel modulator for use at this location. The link between the City Hall and the Access center shall be completed within twelve (12) months of the effective date of the Franchise, or the date the access center is completed, whichever is later.

## 7.2 Interconnection.

A. Interconnection with TCI Systems. The Grantee's cable system (including the Institutional Network which shall be constructed pursuant to this Agreement) serving the City of Monterey and all TCI systems serving incorporated local governments within Monterey County and serving unincorporated Monterey County are served from a common headend and therefore function as a single cable system. The Franchisee shall take all necessary technical and construction steps to ensure that the communities which are served by that common headend are 100% interconnected for PEG access programming and institutional network (I-Net) services throughout the life of this Agreement. There shall not be a charge other than described in Section 7.3.H and the separate Institutional Network Agreement for the use of such interconnection (with TCI systems) for PEG access programming and I-Net services.

B. Interconnection With Other Systems Serving the City of Monterey and Other Adjacent Systems.

The Grantee shall take all necessary technical and construction steps to ensure that the Monterey cable system (as described above in Section 7) is interconnected with at least the following: all cable systems serving Department of Defense property which is located within the City of Monterey (Presidio of Monterey and the Naval Postgraduate School); all "willing" cable systems directly contiguous to the portion of the TCI cable system which serves the City of Monterey; and any Open Video System established pursuant to Section 653 of the Cable Act unless Federal Law changes and no longer requires such interconnection. This bandwidth shall provide the capability to transmit upstream channels and downstream channels in each direction, together with data, telemetry, audio, and other non-video signals using the I-Net and, when applicable, the residential network. The interconnection shall be capable of receiving and delivering, including but not limited to, PEG access programming and I-Net services to and from interconnected systems. If the City directs the Grantee to interconnect its cable system with another system, Grantee shall promptly enter into negotiations with such other system to determine where the interconnect shall be located and how costs for the interconnection will be shared, and to develop a schedule for prompt interconnections. The parties shall have one hundred twenty (120) days to reach agreement. For the purposes of this section, "willing cable system" means the franchised system of any cable operator who is otherwise willing to interconnect with Grantee's cable system on fair and reasonable terms and who pays its own cost of installation and operation of facilities located within its own territory which are required for the interconnection.

C. Cooperation. The City understand that interconnection requires cooperation from other cable system operators. The City shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize interconnection.

D. Grantee Not a Common Carrier. Nothing in this Agreement shall be deemed to require the Grantee to assume the status of a common carrier as defined under applicable law.

### 7.3 Institutional Network Design.

A. In conjunction with the upgrade set forth in Section 7.1, the Grantee shall install, activate and maintain on its upgraded Cable System certain capacity to be referred to as the Institutional Network (I-Net). The I-Net shall utilize whatever capacity is necessary on the fiber portion of the cable system and whatever additional equipment and fiber or coaxial cable is necessary to provide for the Upstream and Downstream I-Net Capacity requirements of this Franchise. The Institutional Network shall include installed equipment to fully provide for the switching and routing of signals between the institutional and residential users of the Cable System as described specifically in Section 7.3.D.

B. The institutional network shall include all equipment required so that the public buildings, educational institutions, and designated locations listed as Full Capacity I-Net locations on Attachment A (collectively called public agencies) will be able to transmit and receive broadband video, data, and voice communications between two (2) or more public buildings (including the PEG access facility) within the City of Monterey either directly or via the headend. The institutional network serving the City of Monterey shall also be able to transmit and receive broadband video and data communications between two (2) or more public buildings (including the PEG access facility serving Monterey) within all of the areas served by Grantee's cable systems within Monterey County which are provided with an I-Net connection pursuant to the franchise agreement between the franchising jurisdiction and the Grantee either directly or via the headend. The locations on Attachment A designated as Low Capacity I-Net sites will be able to transmit and receive data. The I-Net shall be reserved for the sole use of the City and its designated public agencies. Upon request the Grantee shall extend the I-Net to any public agency building located within the Franchise area which is constructed or acquired during the term of the Franchise. The Grantee shall install, operate and maintain cable system, headend, and network components to the point of "demarcation" at the public buildings necessary to provide the activated path between the transmitting and receiving locations. The Grantee shall provide the interface devices at each I-Net location as provided in the separate I-Net Agreement for no charge other than that described in Section 7.3.H. The public agency users of the institutional network shall be responsible for the installation, operation and maintenance of terminal and interface equipment within the public buildings, except as otherwise provided in this Section or Section 7.2.

C. The I-Net shall include optical fibers between the I-Net headend described in Section D and the designated full capacity I-Net locations. The City shall designate in the Institutional Network Agreement the number of optical fibers which

shall be available for I-Net use during the term of this Franchise, including any extension of the term.

1. Full Capacity I-Net Locations. Multiple optical fibers shall link full capacity I-Net locations to the I-Net headend described in Section 7.3.D.
2. Limited Capacity I-Net Locations. These I-Net locations shall include I-Net locations whose sole function is to provide telemetry functions. The Grantee shall make available on the subscriber network, for public agency uses a minimum of 1 MHz of upstream bandwidth for data gathering and a minimum of 1 MHz of downstream bandwidth for data dissemination. The Grantee shall provide symmetrical data modems (10 Mbps upstream and downstream) which shall be installed at all public agency locations designated as low capacity I-Net locations. The cost for such data modems shall be reimbursed to the Grantee pursuant to section 7.3.E. The City shall advise Grantee of the Limited Capacity I-Net locations that the Grantee shall construct, shall activate and shall connect in conjunction with upgrade of the Cable System. There shall be no cost to the public agency users for use of the Limited Capacity I-Net, except that should the cost of any “drops” to these locations exceed the standard drop costs incurred by the Grantee, then the public agency being served shall be responsible for such cost.

D. The I-Net shall be constructed so as to interconnect all user locations with a central processing point at the PEG access center or other location mutually agreed upon between the City and Grantee. The Grantee shall provide equipment racks for the installation of I-Net related equipment and shall make provision for 24-hour back-up power to its equipment located at the PEG access center which is provided pursuant to Section 7.1.C. The Grantee shall provide all necessary equipment for processing and switching all uses of the I-Net for video, voice, and data communications whether those uses are in analog or digital form which is expandable and capable of switching transmissions within and between both the subscriber and institutional networks.

E. Grantee shall also make available to the City and the designated I-Net users for purchase, at Grantee’s cost, modulators, fiber transmitters/receivers and other similar I-Net user equipment.

F. Upon request, Grantee shall make signal security equipment available to I-Net users who must use the subscriber network for downstream

transmissions, should there be reason to prevent such transmissions from being received by Grantee's subscribers.

G. Upon completion of I-Net construction, Grantee shall provide the City with proof of performance measurements pursuant to Section 7.5.B. of this Franchise. After acceptance of the proof of performance by the City, the Grantee shall provide I-Net users with the highest level of service, reliability, repair and maintenance which the Grantee makes available to any commercial or residential user of the Cable System.

H. The use of the I-Net shall be free of charge to all public agencies (e.g., the City, County, educational institutions, the PEG access management entity) located within the City and to Monterey Peninsula Unified School District locations for all video, voice, and data usage. The City will determine which public agencies may utilize the I-Net. The City and the Grantee agree that the incremental additional costs associated with the construction, operations, and maintenance of the I-Net are being provided to the Grantee through the payment described in this Section. The total cost on an annual basis for all public agencies combined for the use of the I-Net shall be a flat fee not to exceed forty-one thousand nine hundred seventy-five dollars (\$41,975). The City and the Grantee agree that this is a "not-to-exceed" number and that the final I-Net fee which the parties agree to determine in the separate Institutional Agreement (which will be completed no more than six (6) months subsequent to the signing of this Franchise Agreement) will be less than the amount stated herein. The formula used to determine the annual not-to-exceed number described herein is described below.

1. 
$$\frac{\text{Incremental Additional Cost of I-Net Construction}}{10} = \$A$$
2. 
$$\$A \times 15\% = \$B$$
3. 
$$\$A + \$B = \text{Annual Flat Fee}$$

I. If in the future the City or any public agency wishes to have the I-Net extended beyond that which is anticipated herein, Grantee agrees to charge on a time and materials basis for the construction of such additional I-Net plant.

J. Grantee agrees to cooperate with the City regarding design of the I-Net to ensure that all I-Net users may be effectively reached and so that the benefits of incremental costs may be realized by the City and its other designated users. The Grantee shall give the City thirty (30) days notice prior to finishing the preliminary overall system infrastructure design and the design of each phase of the cable system, in order to have City's I-Net requirements incorporated in Grantee's construction design. Grantee shall incorporate the City's requirements, and shall give the City the opportunity for a final review and submission of requirements prior to finalizing system design.

K. The I-Net may be used by the City and such other users as it designates. The parties agree that the I-Net will not be used for commercial purposes; however, this limitation shall not prevent the use of the I-Net for any bona fide public purpose even if such use generates revenues to reimburse the City, or other users designated by the City, for the provision of services. For the purposes of example, but not limitation, a bona fide public purpose which would generate revenues and which would be permitted under this section would include the transmission of educational programming for a fee or the sale of GIS data maintained by the City.

L. The City and any public agency user of the I-Net agree to indemnify and hold harmless the Grantee from and against any and all claims, damages, liabilities, costs and expenses, including reasonable attorney's fees and court costs, directly related to the material under the City or a public agency user control carried on the I-Net, including but not limited to, copyright infringement, libel, slander, defamation, patent, trademark, or invasion of privacy claims.

M. The parties agree that the incremental additional costs associated with the construction, operations, and maintenance of the I-Net are being provided to the Grantee through the payment described in Section 7.3.H. and the Grantee agrees that any additional costs associated with the I-Net which may be provided by the Grantee do not represent an "in-kind payment" by Grantee or a franchise fee of any kind or an "external cost" under FCC rules and regulations.

#### 7.4 System Design Review Process.

A. At least sixty (60) days prior to the date construction of any required upgrade or rebuild is scheduled to commence, the Grantee shall provide a detailed cable system design and construction plan and timeline, which shall include at least the following elements or their contemporary equivalent:

1. Design type; trunk and feeder design; number and location of hubs or nodes.
2. Distribution system-cable, fiber, equipment to be used.
3. Headend design and reception facilities including make and model number of antennae, signal processors, modulators, demodulators, etc.
4. Plans for standby power at headend, hubs/nodes, and satellite terminals. The plan should state the make and model number of equipment to be used as well as time capacity.

5. Longest amplifier cascade in the cable system (number of amplifiers, number of miles, type of cable/fiber).
6. Design maps and tree trunk maps for the cable system. The cable system design will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant.

B. The City shall have forty-five (45) days from the date the Grantee provides the City the design and construction plans for review to submit comments on the plans. The Grantee must submit a written response, including an amended plan if deemed necessary by the Grantee, within ten (10) days of the date it receives the City's comments. Should an amended plan be required which delays the Grantee's construction schedule, the delay caused by the filing of the amended plan will be added to the time to complete the construction project.

7.5 Initial and Continuing Tests. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the franchise and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems." The Grantee shall perform at least the following tests:

A. Pre-Construction Quality Control on Cable and Equipment. The Grantee shall employ accepted industry procedures to assure the selection of quality system components. No component shall be used if it fails to meet manufacturer's specifications. The Grantee shall perform quality tests on the existing system components which will be reused in the subscriber system rebuild, including trunk, distribution, and drop cable, and any passive devices, such as taps and directional couplers, to ensure that each is capable of meeting required FCC technical standards.

B. Acceptance Tests. The Grantee shall perform acceptance tests on the cable system at the conclusion of the construction to demonstrate compliance with 47 C.F.R. 76 subpart K in accordance with Section 7.9 of this Agreement.

The City will be permitted to witness the tests. The test results shall be submitted to the City for review. The Grantee shall have the obligation, without further notice from the City, to take corrective action if any segment is not operating or performing within 47 C.F.R. 76 subpart K in accordance with Section 7.9 of this Agreement.

C. Continuing Tests. At the time that the Grantee performs its FCC Proof-of-Performance tests, the Grantee and the City will jointly select test points at various points of the cable system. The quantity of these test points will be mutually agreed upon based on what best represents the architecture of the cable system. The

Grantee shall perform Proof of Performance Tests at these locations in conformance with testing required by 47 C.F.R. 76 subpart K through the life of the Franchise, and at other points mutually agreed upon where cable system user complaints indicate tests are warranted or as required to test all major trunk lines. The City will be permitted to witness the tests. A written report of the test results shall be filed with the City within thirty (30) days of the test. If a location fails to meet performance specifications as outlined in 47 C.F.R. 76 subpart K in accordance with Section 7.9, the Grantee, without requirement of additional notice or request from the City, shall take corrective action, re-test the locations, and advise the City of the action taken and results achieved.

7.6 System Inspections. The City may inspect the Grantee's cable system during and after construction. The City shall have the right to inspect the cable system, subscriber installations, and the Grantee's equipment used in the maintenance of that cable system at any time to determine compliance with the Franchise Agreement, Enabling Ordinance, and applicable Federal, State and local laws. The City shall provide five (5) days written notice to the Grantee of such inspection, which need not include the specific locations to be inspected. Any testing of the system necessary to accomplish such inspections shall only be performed in the presence of an authorized employee of the Grantee and only after reasonable advance notice to the Grantee. The Grantee shall be notified in writing of any violations found during the course of inspections. If, based on subscriber complaints or its own investigation, the City believes that the cable system may not be operating in compliance with the Enabling Ordinance, it may require the Grantee to perform tests and to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem. The Grantee must bring violations into compliance within thirty (30) days of the date it receives notice. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise. This provision is subject to any federal law limitations on the City's authority.

## 7.7 Other Construction Procedures.

The Grantee:

A. shall follow a cable system design and construction plan consistent with its obligations under this Franchise, and use the equipment specified (or substitute equipment of equivalent or better quality) in such cable system design plan and construction plan (except insofar as those plans, if carried out, would result in construction of a cable system which would not meet requirements of federal, state, or local law; and except for such minor modifications as are typical in the industry);

B. shall use equipment of good and durable quality;

C. shall provide a monthly construction report to the City in a form reasonably acceptable to the City;

D. shall maintain a public file showing its plan and timetable for construction of the cable system;

E. shall notify City residents in any construction area at least one (1) day in advance before first entering onto property (except in an emergency) to perform any work in conjunction with cable system construction, and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming;

F. shall provide as-built and design maps for the City's review at the local office of the Grantee after the completion of system construction in any geographic area, and prior to providing the information required by Section 14.3.K. of the Enabling Ordinance; and

G. shall make available to the City upon request maps showing the actual location of additions or extensions to its lines within thirty (30) days of completion of cable system construction in any geographic area.

## 7.8 System Maintenance.

A. Interruptions to be Minimized. Whenever reasonably possible the Grantee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the cable system. The Grantee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

B. Maintenance Practices. In addition to its other obligations, the Grantee shall (a) use replacement components of good and durable quality, with

characteristics better or equal to replaced equipment; and (b) follow stringent industry maintenance standards.

7.9 System Performance. The cable system shall meet or exceed the standards set forth in 47 C.F.R. 76 subpart K ("FCC Standards"), as those standards may be in effect at all times. If the FCC Standards are eliminated and not replaced, the City may continue to enforce the standards which existed prior to the date of elimination. If the City has authority to establish standards, standards may be amended or added in conjunction with, and subject to, Section 22.

7.10 System Extension Requirements.

A. The Grantee shall build its cable system so that it is able to provide service to all areas located within the City limits as they existed on January 1, 1998. The Grantee must build the cable system so that it can extend service to residents, including residents located in areas which may be annexed in the future, in accordance with Section 7.10.B.2. Grantee shall, with all due diligence, construct its cable communications system to serve all areas within the City including any previously unserved areas. Construction of the cable communication system in those previously unserved areas shall be completed as soon as possible. In the future, if the City should acquire franchising authority for Department of Defense property located in Monterey, nothing in this Section 7.10 shall be interpreted to require TCI to overbuild the cable systems currently serving those areas.

B. Line Extension Requirements.

1. Existing City Limits. Within the City boundaries as they existed on January 1, 1998 the Grantee must extend service upon request to any person or business for no charge other than the then-prevailing normal installation charge unless the Grantee demonstrates to the City's satisfaction that extraordinary circumstances justify a waiver of this requirement.

2. New Areas.

a. For areas annexed after January 1, 1998, the Grantee will extend its trunk and distribution system to serve subscribers requesting service after the date hereof at the then-prevailing normal installation charge unless the Grantee demonstrates to the City's satisfaction that extraordinary circumstances justify a waiver.

b. Cost Sharing. In the event that the new subscriber requesting service is not located the equivalent of ten (10) homes per 1,320 cable-bearing strand feet (one-quarter [1/4] miles) from the nearest existing trunk or distribution cable, the Grantee will extend its cable system on request based upon the following cost-sharing formula:

- i.  $\frac{\text{Total Cost to Construct Extension}^1}{\text{Cable Miles of Extension}}$  = Cost Per Cable Mile of Extension
- ii.  $\frac{\text{Cost Per Cable Mile of Extension}}{40}$  = Grantee's Share of Cost Per Residential Unit
- iii. Grantee's Share of Cost Per Residential Unit Times Number of Residential Units Passed = Grantee's Share of Total Cost of Extension
- iv. Total Cost to Construct Extension Minus Grantee's Share of Total = Total Subscriber's Share
- v.  $\frac{\text{Total Subscriber Share}}{\text{Number of Subscribers Requesting Service}}$  = Cost Per Subscriber

C. Subscriber Drops. The Grantee may charge the normal installation rate for service drops of one hundred fifty (150) feet or less unless the Grantee demonstrates to the City's satisfaction that such service drops are technically and/or economically infeasible and that circumstances justify a higher charge. Where a drop exceeds one hundred fifty (150) feet in length, the Grantee may charge the subscriber for the difference between the Grantee's actual costs associated with installing a one hundred fifty (150) foot drop and the Grantee's actual cost of installing the longer drop.

D. In any area where the Grantee would be entitled to install a drop above-ground, the Grantee will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

E. Time for Extension. The Grantee shall extend service as described herein to any Person who requests it:

- 1. If the Person is located in an area within the City limits as defined on January 1, 1998, and service can be provided by

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<sup>1</sup> "Total Cost to Construct Extension" is defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the subscriber drop.

activating or installing a drop to that location, service shall be provided within seven (7) days of the request;

2. If the Person is located in an area which was annexed to the City after January 1, 1998, service shall be provided in accordance with the following timelines and conditions:
  - a. If the Person is located in an area where service can be provided by activating or installing a drop, service shall be provided within seven (7) days of the request;
  - b. If the Person requests service where a system extension of 2,640 cable-bearing strand feet (one-half [ $\frac{1}{2}$ ] cable mile) or less is required (weather and ground conditions permitting), Grantee must provide service according to the following timeline:
    - i. Within ten (10) business days of its receiving a request for Cable Service, Grantee shall apply for any required permits and shall file such permits with the appropriate local or state agency or office, and
    - ii. Grantee shall provide service to that location within thirty (30) days from the date that the Grantee has obtained any required permits for such construction to the Person's location.
  - c. If the Person requests service where a system extension of more than 2,640 cable-bearing strand feet (one-half [ $\frac{1}{2}$ ] cable mile) is required, Grantee must provide service according to the following timetable (weather and ground conditions permitting):
    - i. Within ten (10) business days of its receiving a request for Cable Service, Grantee shall apply for any required permits and shall file such permits with the appropriate local or state agency or office, and
    - ii. Grantee shall provide service to that location within six (6) months from the date that the Grantee has obtained any required permits for such construction to the Person's location.

## 7.11 Public, Educational and Governmental Use.

A. PEG Access Channel Capacity. On the effective date of the Franchise, the Grantee shall provide one (1) downstream channel for PEG access. No later than twelve (12) months after the effective date of the Franchise a minimum of two (2) downstream channels for PEG access shall be provided. After the upgrade of the cable system is completed or within twenty four (24) months of the effective date of this Franchise, whichever is shorter, a minimum of four (4) downstream channels for PEG access shall be provided. Thereafter, the spectrum available for PEG access purposes shall be capable of delivering at least (a) six (6) analog channels, or (b) twenty-four (24) digital channels plus twelve (12) MHz, or (c) six (6) PEG access channels in an HDTV format. The City or its designated access management entity may use the spectrum in either analog or digital configuration as described further below. The City shall give the Grantee at least one hundred twenty (120) days prior notice of required activation of additional PEG access channel/spectrum space on the cable communication system.

1. Definition of PEG Spectrum. For purposes of this Section 7.11 and for all other sections of this Agreement that may relate to this Section, the term “channel” shall refer to the channel capacity set aside for PEG access use that is delivered to each subscriber. Each channel shall consist of 6 MHz of spectrum until such time as all other channels on the cable system are delivered in a digital format, at which time the access channels must be converted to a digital format as discussed in Section 7.11.A.2 below. When such digital conversion of PEG access channel capacity occurs, the spectrum available on the cable system for PEG access use shall be sufficient to transmit twenty-four (24) digital channels. In addition to the spectrum necessary to deliver the twenty-four (24) digital PEG access channels, there shall be an additional twelve (12) MHz of spectrum available for access purposes to implement technological advances, including but not limited to HDTV. At such time that the City and/or PEG Access Corporation wish to introduce a PEG access service or programming that would use any of the additional spectrum beyond that necessary to deliver twenty-four (24) digital PEG access channels, the City agrees to meet and confer with the Grantee and (a) have placed into use all other available PEG access spectrum, or (b) have utilized all other available PEG access spectrum if the PEG access service or programming being proposed is implemented. Because the uses of the additional PEG access spectrum (12 MHz) described earlier are not

traditional one-way video uses, the PEG access channel trigger contained in Section 7.11.B. of this Agreement would be inappropriate and therefore shall not apply to that additional twelve (12) MHz of spectrum. The PEG access channel capacity and/or spectrum that is to be provided as described above must be capable of transmitting signals in any format, and can be used to transmit video, audio only, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high definition signals and compressed signals). A non-standard NTSC use shall be subject to the Grantee's prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG access purposes.

2. Timeline for Digital Conversion of PEG Channel(s). Grantee shall be required to deliver PEG access channels to subscribers in an analog format unless and until all other channels on the system are delivered in a digital format. The PEG access channels must be receivable by subscribers without special expense, other than the expense required to receive basic service. At such time that all other channels on the system are delivered in digital format, the Grantee shall be responsible for all costs associated with delivering PEG access channels to subscribers in digital format.

B. PEG Access Channel Trigger. Commencing thirty-six (36) months after the effective date of the Franchise, the Grantee shall, upon request, provide an additional PEG access channel(s) (beyond the initial four channels) when the channel usage trigger described below has been achieved. An additional public or educational or governmental access channel may be requested if the level of programming on the existing public, educational, or governmental access channel(s) meets or exceeds the following:

1. Whenever any of the PEG access channels as set forth above are in use during sixty percent (60%) of the time between the hours of 9:00 a.m. and 6:00 p.m. and eighty percent (80%) of the time between the hours of 6:00 p.m. and 10:00 p.m. on weekdays (Monday through Friday) for thirteen (13) consecutive weeks, the Franchisee shall make an additional channel available for the same purpose up to the channel capacity of the Cable System. In calculating the usage percentage to trigger provision of additional PEG access channel(s), a repeated program may only be

counted four (4) times after the first run and non-locally produced programming shall not be counted for purposes of triggering the provision of additional PEG access channels.

2. For purposes of Section B.1. above, "locally produced programming" is defined as:
  - a. Programming produced in the City of Monterey or Monterey County; or
  - b. Programming produced by any resident of the City of Monterey (or any local public or private agency which provides services to residents located in the City of Monterey) regardless of where the programming is physically produced.

C. Requirements Regarding Rules and Procedures for Use of PEG Access Channels.

1. The City shall designate a non-profit access management corporation (hereafter "Access Corporation") to manage the use of the PEG access channels under the Franchise.
2. The Access Corporation shall establish and enforce rules for use of the PEG access channels (a) to assure non-discriminatory access to the channels to similarly situated users; and (b) to promote use and viewership of the channels, consistent with the obligation to provide non-discriminatory access to similarly situated users. The City shall be responsible for establishing and enforcing rules for use of the PEG access channels during any period such Access Corporation does not exist.
3. The Grantee may not exercise any editorial control over the content of programming on the designated PEG access channels (except for such programming the Grantee may produce and cablecast on the same basis as other PEG access channel users).
4. The City shall establish rules and procedures under which if PEG access channel capacity is not being used for PEG access purposes, the Grantee is permitted to use PEG access channel capacity for the provision of other services. These rules and procedures shall include a mechanism which shall cause the Grantee to cease its use of PEG

access channel capacity for non PEG access purposes and return said PEG access channel capacity to its original designated PEG access purposes.

5. The PEG access channels shall be available at no charge to users and to the Access Corporation.
6. When PEG access channels are not being used to carry programming provided by other PEG access users, the Access Corporation at its sole cost and expense shall have the right to back up access programming with other programming, consistent with its mission to promote public, educational, and governmental use of the channels. This paragraph shall not limit the Grantee's rights under 47 U.S.C. § 531(d).
7. PEG access channels may not be used for the cablecast of commercial advertising or a program whose purpose is commercial and for profit without the express written permission of the Grantee.

D. Support for Access.

1. The City and the Grantee agree that support of PEG access is a partnership.
2. The City will commit to dedicating a portion of its franchise fees to the support of PEG access as well as identifying facility space for a PEG access center.
3. The City directs and the Grantee agrees that commencing no later than sixty (60) days after the effective date of the Franchise, the Grantee shall pass-through seventy cents (70¢) per subscriber per month for any additional support for the Access Corporation. Such a pass-through will be paid quarterly to the Access Corporation designated by the City pursuant to Section 7.11.C.1. The Access Corporation initially designated shall be Access Monterey Peninsula. The Grantee shall have the right to identify this pass-through on subscriber's bill as the community access fee line item. In the event a subscriber refuses to participate in the community access fee payment, the Grantee will not be required to discontinue service or make the payment on behalf of the customer. Any payment made by a customer will first be applied to the customer's balance; any remaining

amount will then be allocated to the community access fee. Any amount collected by Grantee under this section shall not be deemed Gross Revenues for purposes of calculating the Franchise Fee owed to the City, shall not be deemed to be part of the Franchise Fee, and falls within one or more of the exclusions set forth in 47 U.S.C. 542 (g)(2). This pass-through amount to the Access Corporation may be increased (or decreased) if the City Council takes action by resolution to change the pass-through amount to be provided to the Access Corporation. The City agrees to meet and confer with the Grantee prior to any City Council action to approve an increase in the community access fee described in this section when such amount exceeds one dollar (\$1.00) per subscriber per month.

E. Equipment and Facilities. The Grantee shall pay to the City, or the access management corporation designated by the City, for PEG access equipment and facilities the following amounts:

1. for initial equipment and facilities -- eight hundred thousand dollars (\$800,000), to be deposited on the effective date of the Franchise; and
2. for ongoing PEG access capital support -- thirty-five cents (35¢) per basic subscriber per month, to be provided on a quarterly basis.
3. Nothing in this section 7.11.E. requires or shall be deemed to require the Grantee to make any payment which constitutes a Franchise Fee under 47 U.S.C. § 542.

F. Access Services. The Grantee shall have a continuing obligation to provide access services, in accordance with community needs as reasonably ascertained by the City in light of the costs thereof. The Grantee's obligation under this section shall be fulfilled so long as it (a) maintains a valid and binding contract with the Access Corporation designated by the City and (b) provides to the designated Access Corporation those resources specified in Section 7.11.D.3; provided this Section 7.11.F. shall not affect any specific obligations related to PEG access elsewhere in this Franchise Agreement. If the City and Grantee should determine that it wishes to have Grantee rather than a designated Access Corporation provide PEG access services, such services shall be provided by the Grantee on mutually agreeable terms and conditions. Nothing in this section requires or shall be deemed to require the Grantee to make any payment which constitutes a Franchise Fee under 47 U.S.C. § 542.

G. Cable Drops for PEG Access Locations. The Grantee shall, upon request of the City Manager's Office, install one (1) drop and provide basic cable service at no charge to any public educational institution within the Franchise area, designated PEG access facility(s), and City buildings occupied for municipal purposes. The City, public school, or access facility may install facilities and equipment to transmit the signal to all rooms within a building or within adjacent buildings. All such non-Grantee installation of facilities and equipment shall be in compliance with FCC signal leakage standards.

H. Promotion. In order to help develop and maintain (a) awareness of the PEG access resources and services, and (b) viewership of the PEG access channels by Monterey cable subscribers, the Grantee shall, throughout the term of this Agreement, provide the following promotional services to the Access Corporation, free of any charges:

1. Thirty (30) 30-second PEG access promotional announcements per month on the cable programming services in which local advertising is inserted, to be scheduled no less than ninety (90) days prior to cablecasting. In addition:
  - a. Ten (10) of these monthly PEG access promotional announcements shall be inserted during "prime time" hours (i.e., between 7:00 p.m. and 11:00 p.m.), and
  - b. Five (5) of the monthly PEG access promotional announcements that are inserted during prime time hours shall be placed on channels selected by the Access Corporation.
2. Program schedule information for each PEG access channel shall be listed in all print and electronic program guides provided by the Grantee to subscribers, in the same manner as the program schedule information for other cable channels is listed. The Grantee shall provide the Access Corporation access to third party providers to include PEG access channel listings in their print and electronic program guides provided by Grantee to its subscribers. The Access Corporation shall be responsible for the timely updating of these listings. Any fees associated with special placement or handling beyond the standard manner of presenting program schedule listings shall be the responsibility of the Access Corporation.

3. On an annual basis, the Grantee shall allow the Access Corporation to submit a billstuffer, created at the Access Corporation's expense, to be inserted into all customer statements within the Grantee's cable system in Monterey County. All costs for insertion and postage shall be provided by the Grantee. The Grantee shall provide access to its vendors so as to afford the Access Corporation the most affordable printing price for the billstuffers. In consideration of regulatory notification requirements, the Grantee has final approval on the dates for insertion.
  
4. If the Grantee decides to move a PEG access channel from its initial channel number location to another during the term of the franchise agreement, the Grantee shall provide at least six (6) months notice of each such PEG access channel relocation if the new service to be placed at the channel number location held by an access channel is a satellite service, and at least 90 days prior notice if the new service to be placed at the channel number location held by an access channel is a must-carry signal. The Grantee shall pay a fee of two thousand dollars (\$2,000) per relocated PEG access channel to the Access Corporation, if notification is provided to the Access Corporation and City consistent with the deadlines listed above. If the Grantee fails to provide notice consistent with the deadlines listed above, the Grantee shall pay a fee of five thousand dollars (\$5,000) per "moved" PEG access channel. The channel relocation fees paid to the Access Corporation shall be used to replace print materials, channel ID's, and other promotional materials (as well as other video materials) containing the old channel number(s), and to otherwise promote the new location of the channel(s).

I. General. The parties agree that any cost to the Grantee associated with providing PEG access services, facilities, and equipment under this Franchise, including without limitation the amounts set forth in 7.11.D-H and payments made outside this Franchise, if any, are not part of the Franchise Fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

7.12 Ascertainment of Programming. At least once every three (3) years during the term of this Franchise Agreement, the Grantee shall conduct an ascertainment of the programming needs, interests, and preferences of the subscribers within its franchise area. The Grantee shall report to the City the results of the Grantee's programming ascertainment.

7.13 No City Control.

During the term of this Franchise, the City may not prohibit the Grantee from providing any program or class of programs, or otherwise censor communications over the cable system; except that, nothing in this section shall be read to authorize the Grantee to engage in communications which are prohibited by law.

7.14 Emergency Alert System.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, subpart D and E, as such provisions may from time to time be amended, the Grantee shall install and maintain an Emergency Alert System (EAS). The EAS shall be remotely activated by telephone and shall allow a representative of the City to override the audio and video on all channels on the Grantee's system that may be lawfully overridden, without the assistance of the Grantee, for emergency broadcasts from a location designated by the City in the event of a civil emergency or for reasonable tests. Testing of the EAS shall occur at times that will cause minimal subscriber inconvenience.

B. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City.

SECTION 8. CONSTRUCTION STANDARDS

The construction, installation, operation, and maintenance of the cable system and all parts thereof shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with the following safety, construction, and technical specifications, codes and standards, as they may now exist or be amended or adopted hereafter:

- A. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- B. National Electrical Code;
- C. National Electrical Safety Code (NESC);
- D. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;
- E. Construction, Marking and Lighting of Antenna Structures, FCC Rules 47 C.F.R. Part 17;

- F. all federal, state and municipal construction requirements, including FCC Rules and Regulations;
- G. all building and zoning codes, and all land use restrictions and local safety codes;
- H. Monterey Cable Communications Enabling Ordinance; and
- I. CALTRANS Standards for Vehicular Traffic Control.

In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a cable system which could not meet requirements of federal, state, or local law; and except for such minor modifications as are typical in the industry). The City may adopt reasonable additional standards of general applicability after consultation with the Grantee as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur during the Franchise term.

## SECTION 9. RATE REGULATION

9.1 For rates subject to rate regulation by the City, all charges to subscribers and users shall be uniform throughout the franchise area with a written schedule of fees for all services offered available upon request. The Grantee hereby agrees to provide each new subscriber with prices and options for programming services and conditions of subscription to programming and other services.

9.2 The Grantee shall not, with regard to fees subject to rate regulation by the Federal Communications Commission and the City, discriminate or grant any preference or advantage to any person; provided, however, that the Grantee may establish different rates for different classes of subscribers, provided further that different rates may be offered to commercial or bulk rate subscribers, and reduced rates may be offered to the economically disadvantaged.

9.3 Determination of the reasonableness of initial rates or any proposed rate increase will be made pursuant to the Cable Act or other applicable Federal or State laws.

9.4 All notices will be provided to the City at least thirty (30) days before any proposed increase is effective.

9.5 The Grantee will notify subscribers of any proposed increase at least thirty (30) days before said increase is to become effective.

9.6 The City reserves the right to prescribe reasonable rates for cable services or associated equipment, pursuant to the Cable Act or other applicable Federal or State law, if it is determined that a proposed rate is unreasonable.

## SECTION 10. FRANCHISE FEES

10.1 The Grantee shall pay to the City an amount equal to five percent (5%) of the gross revenues derived from the operation of its cable system to provide cable services in the City, or the maximum fee permitted by federal law, if larger.

10.2 Franchise Fee payments due the City under this Section 10 shall be computed at the end of each calendar quarter and shall be due and payable for the preceding quarter as follows: (i) on or before April 30 (for the first quarter); (ii) July 31 (for the second quarter); (iii) October 31 (for the third quarter); and (iv) on or before January 31 (for the fourth quarter) of each year. Each payment shall be accompanied by a statement of Gross revenue received for the quarter and a report showing the basis for computation of fees as set forth in Section 20.1.C.

10.3 No acceptance by the City of any such payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance by the City of payment be construed as a release of any claim the City may have for further or additional sums payable under the Franchise Agreement by the Grantee.

10.4 The Grantee shall submit to the City a late fee on franchise fee payments which are submitted after the due dates as described in Section 10.2, except that the Grantee shall be granted a five-day "grace" period. Any franchise fee payment submitted after the five-day grace period shall be subject to a late fee. The late fee shall be based upon a monthly interest rate of ten percent (10%) or calculated by taking the then current Federal Discount rate plus five percent (5%), whichever is greater.

10.5 The Franchise fee shall be paid in addition to any other fees, charges, or assessments required by the City, unless such additional fee, charge, or assessment falls within the definition of a Franchise fee under the Cable Act. Payments, if any, in support of PEG access shall not be included in the computation of Franchise fees.

10.6 Audits to verify Franchise Fee payments may be conducted by the City pursuant to Section 17.4 of the Enabling Ordinance, provided, however, that the City shall not audit any of the Grantee's contractors or subcontractors. The City shall give the Grantee thirty (30) days prior written notice of such audits and shall conduct the audit at the Grantee's business office or other location agreed to by the parties (pursuant to Section 19.1) during normal business hours.

10.7 When the Franchise terminates for any reason (other than through the issuance of a renewal or superseding Franchise), the Grantee shall file with the City within ninety (90) calendar days of the date its operations in the City cease, a financial statement, certified by a certified public accountant or the Grantee's chief financial officer, showing the gross revenues received by the Grantee since the end of the previous fiscal year. Adjustments will be made at that time for Franchise fees due to the date that the Grantee's operations under the terminated Franchise ceased.

SECTION 11. PROTECTION OF CITY AND ENFORCEMENT -- PERFORMANCE BOND

11.1 Within ninety (90) days of the effective date of this Franchise, the Grantee shall establish in the City's favor a performance bond in an amount not less than ten percent (10%) of the estimated cost of constructing, upgrading, or rebuilding the cable system required by the Franchise Agreement. The performance bond shall be issued by a corporate surety authorized to transact a surety business in California.

11.2 In the event the Grantee fails to complete the cable system construction, upgrade, or rebuild in a safe, timely, and competent manner in accord with the provisions of this Franchise and the Enabling Ordinance, applicable law, and permits, or otherwise fails to comply with its obligations under this Franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, or the cost of completing or repairing the cable system construction, upgrade, rebuild, or other work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

11.3 The City shall eliminate the bond requirement and sign any document necessary to achieve such elimination upon the satisfactory completion of the cable system construction, upgrade, or rebuild as evidenced by completion of Acceptance Testing in Section 7.5 B. of this Franchise Agreement. The City may reestablish a performance bond consistent with this Section 11 for any subsequent upgrade, or rebuild of the Grantee's cable system.

11.4 The performance bond shall contain the following endorsement or a similar endorsement acceptable to the City:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

SECTION 12. PROTECTION OF CITY AND ENFORCEMENT -- SECURITY FUND

12.1 On the effective date of the Franchise, the Grantee shall post with the City an irrevocable letter of credit in the amount of one hundred thousand dollars (\$100,000). The City may draw on the letter of credit as a security fund to ensure the faithful performance of all provisions of the Enabling Ordinance, the Franchise Agreement, applicable law, and permits, and the payment by the Grantee of any penalties, liquidated damages, claims, liens, fees, or taxes due the City which arise by reason of the construction, operation, or maintenance of the cable system.

12.2 The irrevocable letter of credit shall be subject to approval as to content and form by the City Attorney. The letter of credit shall in no event require the consent of the Grantee prior to the collection by the City of any amounts covered by the letter of credit, and is subject to Section 14 of this Franchise.

12.3 Within three (3) business days of the date it draws on the Grantee's letter of credit, the City shall send written notice to the Grantee notifying it that the City has drawn on the fund, the amount withdrawn, and the specific reasons for the withdrawal.

12.4 Within thirty (30) calendar days after notice to the Grantee that an amount has been withdrawn by the City from the security fund, the Grantee shall deposit a sum of money sufficient to restore the security fund to the total amount in the fund immediately prior to the withdrawal. If the Grantee fails to restore the security fund to the original amount within thirty (30) calendar days, such failure may be considered a material breach of this Franchise Agreement and may be used as grounds for revocation of the Franchise.

12.5 If the Franchise terminates for any reason, and the Grantee has ceased to provide service in the City, the balance of the security fund that remains following termination of the Franchise and satisfaction of all of its obligations which are secured by the fund shall be returned to the Grantee. Funds shall not be returned until the City has determined that the Grantee does not owe funds to the City and is not in default, which determination shall be made no later than ninety (90) days following termination of the Franchise.

SECTION 13. PROTECTION OF CITY AND ENFORCEMENT -- APPROVAL OF SURETIES, RELATION TO OTHER REMEDIES

13.1 The insurance, bonds, and security fund, and letter of credit required by this Franchise and the Enabling Ordinance shall be issued either by an admitted insurer in California or by a corporate surety authorized to transact a surety business in California or by a financial institution acceptable to the City.

13.2 Recovery by the City of any amounts under this Franchise and the Enabling Ordinance shall not in any respect limit the Grantee's duty to indemnify the City as provided in the Enabling Ordinance for any unrecoverable amounts due the City; nor shall recovery of any amounts in any respect prevent the City from imposing penalties under California law, or exercising any other right or remedy it may have under the Franchise or at law or equity.

#### SECTION 14. FRANCHISE VIOLATION - NOTICE AND PROCEDURES

14.1 Before exercising any right of redress available to it under Sections 15 through 17 of this Franchise Agreement or the Enabling Ordinance, including determination of any penalty assessable under California law, the Franchise or Enabling Ordinance, the City shall follow the procedures set forth in this Section 14.

14.2 The City shall notify Grantee in writing of any alleged violation (Violation Notice) of this Franchise or the Enabling Ordinance. The Violation Notice shall: (1) describe the alleged violation; (2) direct the Grantee to cure the alleged violation or show cause why the alleged violation should not be or cannot be cured; (3) state the time for response. The time for response by the Grantee to Violation Notice issued by the City shall be a period of thirty (30) days, except the City may establish a shorter time frame for violations that present a danger to public health, safety, or welfare.

14.3 Within the time period designated for response, the Grantee shall respond in writing to the City indicating that: (1) the Grantee intends to contest the Violation Notice, describing all facts relevant to its claim; or (2) the Grantee has completely cured the violation and providing documentation to the City demonstrating that the violation has been cured; or (3) the Grantee has begun to correct the violation, but that with all due diligence the violation cannot be cured immediately, and describe in detail steps already taken and the Grantee's plan and schedule for curing the violation.

14.4 If the Grantee intends to contest the Violation Notice, or the City finds that the Grantee may have failed to cure or submit an acceptable plan for curing the default in performance, the City may schedule an administrative hearing where the Grantee will be asked to show cause why it should not be found in violation of the Franchise. The Grantee shall be given at least twenty (20) days written notice of such a hearing. The City Manager shall serve as the Hearing Officer. The notice shall indicate the City's intent to review and the time and place of the hearing. The City shall: (1) provide public notice of the hearing in compliance with state law notice requirements; (2) hear any person interested therein; and (3) provide the Grantee an opportunity to be heard.

14.5 The City Manager shall within ten (10) days of such administrative hearing, issue findings in writing, stating the basis for the findings which shall include the proposed cure plan and timeline for curing the default (if the default can be cured)

and penalties or damages, if any, owed. If the City Manager finds that the Grantee is in violation of the Franchise and has failed to cure the default in performance (or the default cannot be cured), the City may exercise any right it has under Sections 15 through 18. Correction is not complete until all penalties and damages, if any are owed, are paid. The Grantee may appeal the decision of the City Manager to the City Council. Such an appeal shall be heard at a lawfully noticed City Council meeting.

14.6 If the City determines, as the result of the process described in this Section 14, that the conduct of the Grantee has included those actions delineated in Section 15 as grounds for franchise revocation, then the issue of Franchise revocation may be placed on the City Council agenda at the expiration of any timeline established for the Grantee to reach franchise compliance. A revocation hearing shall be held before the City Council, during which the Grantee shall be provided an opportunity to be heard, including the right to present testimony. Upon completion of the revocation hearing, the City Council may chose to terminate the Grantee's franchise should it find that the Grantee's actions are consistent with the termination/revocation criteria in Section 15.

14.7 Except where precluded by court order, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee, the Grantee shall not be excused from the performance of its obligations under this ordinance or the Franchise.

## SECTION 15. TERMINATION, REVOCATION, FORFEITURE

15.1 In addition to all other rights, powers, and remedies reserved by the City, the City shall have the additional, separate, and distinct rights to revoke the Franchise, or to shorten the term of the Franchise, except that nothing herein shall deprive the Grantee of its rights under Section 626 of the Cable Act. The City may shorten the term of the Franchise to a period not less than thirty (30) months from the date of the City's action shortening the term, or if the remaining term is thirty-six (36) months or less, half the remaining Franchise term, if:

A. the Grantee becomes fiscally unable to pay its debts, or is judged to be bankrupt;

B. the Grantee practices any intent to criminally defraud in its conduct in obtaining the Franchise or operating under it;

C. the Grantee attempts to evade any material provision of the Franchise or Enabling Ordinance or applicable law relating to the construction, operation, or repair of its cable system and refuses to cure it;

D. the Grantee substantially violates any material provision of the Franchise or any material rule, order, or regulation enacted by the City Council in accordance with this Franchise and refused to cure it in a manner agreed to by the City; or

E. the Grantee abandons its Franchise (the Grantee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the cable system as required by its Franchise, when there is no event beyond the Grantee's control that prevents the operation of the cable system, and where operation would not endanger the health or safety of the public or property).

15.2 Upon revocation of the Franchise, or upon any other termination of the Franchise by passage of time or otherwise, the City shall have the right to require the Grantee to remove, at the Grantee's expense, its cable system from streets, public property, and any private property occupied pursuant to the revoked, canceled, or terminated Franchise. The City shall notify the Grantee in writing that the cable system should be removed, and identify any period during which the Grantee will be required to continue to operate the cable system as provided in Section 18. In removing its cable system, the Grantee shall refill and compact, at its expense, any excavation that shall be made and shall leave all streets, public property, and private property in as good a condition as that prevailing prior to the Grantee's removal of the cable system. The provisions of Sections 13 and 14 of this Franchise Agreement and Sections 18 through 22 of the Enabling Ordinance shall remain in full force and effect until the cable system is removed.

15.3 If a renewal or extension of the Grantee's Franchise is denied and upon revocation or termination of the Franchise the Grantee may, if the City declines to acquire ownership of the cable system pursuant to Section 23.2 of the Enabling Ordinance and the Cable Act, sell or transfer the ownership of the cable system, subject to Section 24 (Transfers) of the Enabling Ordinance, so long as such transfer of ownership is completed within one hundred twenty (120) days of the date of termination or revocation.

## SECTION 16. REMEDIES -- LIQUIDATED DAMAGES

16.1 Because the Grantee's failure to comply with provisions of this Franchise will result in injury to the City, and because it will be difficult to estimate the extent of such injury, pursuant to Section 22 (Remedies -- Liquidated Damages) of the Enabling Ordinance, the City and the Grantee hereby agree to the following liquidated damages, which represent both parties' best estimate of the damages resulting from the specified injury. Damage amounts may be adjusted throughout term of Franchise by the City by resolution to take into account increases in the Consumer Price Index.

16.2 for failure to complete construction or extend service in accordance with the Franchise: seven hundred fifty dollars (\$750) per day for each day the violation continues;

16.3 for failure to comply with material requirements for PEG access use of the cable system: five hundred dollars (\$500) per day for each day the violation continues;

16.4 for repeated, willful, or continuing failure to submit reports, maintain records, provide documents or information: two hundred dollars (\$200) per day for each day the violation continues;

16.5 for violation of customer service standards: three hundred fifty dollars (\$350) per violation per day (for matter of clarification, the liquidated damages that may be assessed under this Section 16.5 are not intended to be computed on a per customer, per violation, per day basis);

16.6 for failure to comply with transfer provisions: five hundred dollars (\$500) per day from the date of any unlawful transfer; and

16.7 for all other material violations: five hundred dollars (\$500) per day for each day the violation continues.

#### SECTION 17. REMEDIES -- CUMULATIVE

All remedies provided under this Franchise Agreement or the Enabling Ordinance shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it relieve the Grantee of its obligations to comply with the Franchise. Remedies may be used singly or in combination, subject to any right that the City may have under law or at equity.

#### SECTION 18. REMEDIES -- CONTINUITY OF SERVICE

18.1 It is the right of all subscribers in the franchise area to receive all available services from the Grantee as long as their financial and other obligations to the Grantee are satisfied and Grantee is receiving all compensation due it from subscribers.

18.2 In the event of the termination or transfer of the Franchise, the Grantee shall ensure that all subscribers receive continuous, uninterrupted service regardless of circumstances in accordance with this Section 18. At the City's request, the Grantee shall cooperate with the City to operate its cable system for a temporary period (the "Transition Period") following termination or transfer of the Franchise as necessary to maintain continuity of service to all subscribers, and shall cooperate in the development

of plans required to ensure an orderly transition from one operator to another. The Transition Period will be no longer than the reasonable period required to select another Grantee and build a replacement cable system. During such Transition Period, the cable system shall be operated consistent with the terms and conditions of this Franchise Agreement and the Enabling Ordinance and the financial benefits of operation shall accrue to the Grantee.

18.3 In the event the Grantee fails to operate the cable system for ninety-six (96) hours during any seven (7) day period without prior approval of the City, or if the System is abandoned as defined in Section 15.1.E, the City may, at its option, operate the cable system or designate an operator until such time as the Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all costs or damages resulting from the Grantee's failure to perform that are in excess of the revenues from the cable system received by the City. Additionally, the Grantee will cooperate with the City to allow City employees and/or City agents free access to the Grantee's facilities and premises for purposes of continuing cable system operation.

## SECTION 19. BOOKS AND RECORDS -- INSPECTION

19.1 The City may inspect and copy the books, records, maps, plans, and other documents, including financial documents, in the control or possession of the Grantee, or any person that constitutes an operator of the Grantee's cable system: (1) to enforce the City's rights or assess compliance with the Franchise and applicable law; (2) in the exercise of any lawful regulatory power; or (3) as may be convenient in connection with any proceeding the City may or must conduct under applicable law with respect to the Grantee's cable system. The material shall be produced at a location within the Monterey City limits unless the City agrees to inspection and copying at some other place. Material that the City requires the Grantee to produce under this section shall be produced upon reasonable notice, no later than thirty (30) days after the request for production. Requests for extensions of time to respond shall not be unreasonably denied.

19.2 Access to Grantee's records shall not be denied to the City on the basis that said records contain "proprietary" information. Refusal to provide information required herein to the City shall be grounds for revocation. The Grantee may request that the City treat records containing trade secrets or proprietary information as confidential under the California Public Records law. The Public Records law shall govern the City's treatment of any such request and other applicable state and federal law.

SECTION 20. BOOKS AND RECORDS -- REPORTS AND RESPONSES TO QUESTIONS

20.1 The Grantee shall provide, in a form acceptable to the City, the following quarterly reports at the time scheduled to make its Franchise fee payment:

A. a report showing the number of service calls completed by type during the prior quarter;

B. a report showing the number of outages for the prior quarter, identifying separately: (1) each planned outage, the time it occurred, its duration, and the estimated number of subscribers affected; and (2) each unplanned outage, the time it occurred, its estimated duration, the area and the estimated number of subscribers affected;

C. a Franchise fee report showing revenues received, by category, in a form acceptable to the City, such report shall meet the requirement of Section 10.2; and

D. a report stating the subscriber totals for: (1) each cable service tier; (2) premium service; (3) pay-per-view, and (4) any other programming service, information service.

20.2 Within ninety (90) days after the close of the Grantee's fiscal year, the Grantee shall submit a written annual report, in a form approved by the City, including, but not limited to, the following information:

A. a summary of the previous year's activities in the development of its cable system in the City, including, but not limited to, additions, deletions, or improvements begun or discontinued during the reporting year, services initiated or discontinued, number of subscribers (including gains or losses), homes passed, and miles of cable distribution plant in service;

B. a financial statement, including a statement of Grantee's income and a profit and loss statement or operating statement that shall be certified by the Grantee's Chief Financial Officer under penalty of perjury; and

C. a detailed copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the City.

20.3 Unless otherwise specified and within thirty (30) days upon request, the Grantee shall mail the following documents to the City:

- A. within thirty (30) days of the date mailed to shareholders or partners, the annual report, if any, of the Grantee, or each affiliate which controls, owns, or manages the Grantee and issues an annual report;
- B. copyright filings regarding the operations of the Grantee's cable system;
- C. FCC Forms 325 and 395 (or their successor forms) for the Grantee's cable system; and
- D. FCC proof of performance and RF signal leakage tests (or their equivalent).

20.4 The Grantee shall file with the City any notice of deficiency, forfeiture, or other document issued by any state or federal agency which has instituted any investigation or civil or criminal proceeding naming the cable system, the Grantee, or any operator of the cable system, to the extent the same may affect or bear on the operations of the Grantee's cable system.

20.5 The Grantee shall file with the City any request for protection under Bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee, any affiliate which controls or manages the Grantee, or any operator of the cable system.

**SECTION 21. BOOKS AND RECORDS -- MAINTENANCE**

In addition to reports required by this Franchise, the Grantee shall maintain records of the following in a reasonable form. The records shall be kept at the Grantee's local office and shall be available for City review and copying during normal business hours. Records of any event recorded shall be kept for the time frame indicated below.

- A. records of outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage, and cause (to be maintained for five (5) years);
- B. records of service calls for repair and maintenance, indicating date and time service was requested, date and time service was scheduled (if it was scheduled), date service was provided, and (if different) date the problem was solved (to be maintained three (3) years);
- C. records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and date and time service was extended (to be maintained three (3) years); and

- D. maps showing the current location of the cable system.

## SECTION 22. PERFORMANCE MONITORING

### 22.1 Triennial Review

A. During the years which commence on the third and/or sixth anniversaries of the effective date of the Franchise, and every third year thereafter If the Franchise is renewed or extended, the City may commence a review of the Grantee's performance under the Franchise. As part of this review, the City may consider: (1) whether the Grantee has complied with its obligations under the Franchise and applicable law; (2) whether customer service standards, technical standards, or bond or security fund requirements are adequate or excessive; and (3) other issues as may be raised by the Grantee, the City, or the public.

B. The City shall conduct at least one public hearing at a lawfully noticed City Council meeting to provide the Grantee and the public the opportunity to comment on the Grantee's performance and other issues considered as part of this review.

### 22.2 Reopener

A. The City may, at any point after the fifth anniversary of the effective date of this Franchise, commence a review to determine whether Grantee has satisfied its obligation to respond to community needs and interest by incorporating technological advances into its system through upgrades and rebuilds. Both the City and the Grantee agree to make a full and good faith effort to participate in the process in a manner which accomplishes this end.

B. The City shall conduct at least one public hearing at a lawfully noticed City Council meeting to provide the public the opportunity to comment on the issues which are to be considered in this franchise reopener process.

C. The City may require the Grantee to submit a proposal describing its plans including a timetable and costs, to incorporate technological advances into its system through upgrades and rebuilds. The City may set a deadline for submission of the proposal, which deadline shall provide the Grantee no fewer than sixty (60) days to prepare the proposal from the date a written request for the proposal is submitted to the Grantee.

D. Following receipt and analysis of any proposal, the City and the Grantee shall negotiate in good faith to develop a plan, including a timetable, for an appropriate upgrade or rebuild of the system.

E. At the end of the review and negotiation period, the City shall advise the Grantee of its determination regarding the upgrade/rebuild plan. The City shall award the Grantee a five (5) year extension beyond the initial ten (10) year term of this Franchise Agreement if the upgrade/rebuild plan submitted by the Grantee includes the completion of a system rebuild which is the greater of either a 750 MHz rebuild or a rebuild which brings the cable system functionality to that of systems which are initially constructed or rebuilt in the year this reopener is activated and if the Grantee agrees to complete such an upgrade/rebuild by the end of the seventh (7th) year after the effective date of this Agreement. If the Grantee objects to any requirement for modification, alteration, or expanded capabilities of the system requested by the City, it must do so in writing within fifteen (15) days of the City's notification. If the Grantee is unwilling to comply with the City's request, the City may, after a public hearing, shorten the existing franchise term so that the term expires not less than thirty-one (31) months after the decision is made to shorten the franchise term.

22.3 Grantee Cooperation. The Grantee shall cooperate in the triennial reviews and the reopener process described in this Section.

22.4 Exercise of Authority. The City may exercise appropriate regulatory authority under the provisions of this Franchise and applicable law, as amended from time to time.

SECTION 23. MISCELLANEOUS

23.1 Time of Essence; Maintenance of Records of Essence. In determining whether the Grantee has substantially complied with the Franchise, the City and the Grantee agree that time is of essence. As a result, the Grantee's failure to complete construction, extend service, seek approval of transfers, or provide information in a timely manner may constitute substantial breaches of the Franchise. The maintenance of records and provision of reports in accordance with the Franchise is also of essence to this Franchise Agreement.

23.2 Effect of Preemption; Federal and State Law. The Grantee must comply with all applicable provisions of federal and state law, except to the extent those provisions are lawfully superseded by a provision of the Enabling Ordinance. If the City's ability to enforce any Franchise provision is finally and conclusively preempted, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a change in law, the provision would again be enforceable, it shall be enforceable and the Grantee will comply with all obligations thereunder after receipt of notice from the City.

23.3 Force Majeure. The Grantee shall not be deemed in default or non-compliance with provisions of its Franchise where performance was rendered impossible by war, riots, civil disturbance, hurricanes, floods, other natural catastrophes, or similar events beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such non-compliance, provided the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and integrity of the public, streets, public property, or private property.

23.4 Severability. If any provision of this Franchise Agreement is held by a court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, the validity of the remaining sections hereof shall not be affected.

23.5 Written Notice. Notices shall be given as follows:

To the City:  
Office of the City Manager  
City Hall  
Monterey, California 93940  
with copies to:

To Grantee:

General Manager  
TCI Cablevision  
Post Office Box 1711  
Monterey, California 93940  
with copies to: Franchise Department  
TCI Cablevision of California, Inc.  
1850 Mt. Diablo Suite 200  
Walnut Creek, California 94596  
(or Alternate Location as noticed by TCI)

Notice shall be deemed given three (3) business days after posting with pre-paid postage, return receipt requested, first class mail.

23.6 Warranties and Guarantees. The City may require the Grantee to provide guarantees and warranties from TCI West, Inc. or, in the event of a transfer or reorganization, an equivalent parent (or affiliate with comparable assets) that manages, owns, or controls the Grantee, to ensure compliance with this Franchise.

23.7 Benefit to City. This Franchise shall be subject to the provisions of the Enabling Ordinance, and in the event of a conflict between this Franchise and the Enabling Ordinance, unless expressly stated to the contrary herein, the provisions of the Franchise shall apply.

23.8 California Law Applies. Except as to matters which are governed solely by federal law, this Franchise will be governed by and construed in accordance with the laws of the State of California, and this Franchise is deemed to have been executed in the City of Monterey, California.

AS PASSED AND APPROVED by the City Council of the City of Monterey, California on the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

THE CITY OF Monterey, California

BY:

\_\_\_\_\_, Mayor  
Daniel Albert

ATTEST:

\_\_\_\_\_, City Clerk  
Diane Billingsley

APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1998

BY:

\_\_\_\_\_, City Attorney  
William B. Conners

ACCEPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1998

\_\_\_\_\_  
TCI Cablevision of California, Inc.

