



## ***EXECUTIVE DEPARTMENT***

Information Technology Division  
Memorandum

**To:** Mayor Diane Wolfe Marlin and Urbana City Council  
**From:** UPTV Station Manager Jason Liggett, IT Director Sanford Hess  
**Regarding:** Comcast Franchise Renewal  
**Date:** December 17, 2020

**Introduction:** The current cable franchise agreement with Comcast expires on January 7, 2021. Generally, this agreement grants Comcast the use of City right-of-way to provide its services to customers. The agreement grants the City of Urbana and City of Champaign joint operation of up to five channels on the cable system. The agreement allows the City to collect a franchise fee and PEG fee.

**Discussion:** The City has been in negotiation with Comcast since 2018. The attached agreement is the result of the negotiation process.

Key Provisions: There are updates throughout the document in comparison to the expiring agreement. Many of those updates are minor language changes. Key provisions include:

- Detailed language in **Section 3 Construction and Maintenance of the Cable System** to better align with the i3 Broadband franchise agreement.
- Inclusion of language referencing the FCC Third 621 order in **Section 4.5 Complimentary Service to Municipal Buildings**
- Retention of **Section 10.1.1 Fifth PEG Channel**
- Change in PEG capital fee rate and reporting requirements in **Section 10.4 PEG Capital Support**

**Recommendation:** We recommend that City Council approve the attached Resolution, which will authorize the Mayor to execute the cable franchise agreement with Comcast.

Attachments: Draft Resolution  
Comcast Franchise Agreement  
Attachment A to the Comcast Franchise Agreement

**RESOLUTION NO. 2020-12-069R**

**RESOLUTION APPROVING CABLE FRANCHISE AGREEMENT**

**(Comcast of Illinois/Indiana/Ohio, LLC)**

**WHEREAS**, the City of Urbana, Illinois (the “City”) is a municipal corporation and a home-rule unit of local government pursuant to Article VII, Section of the Illinois Constitution of 1970; and

**WHEREAS**, the City and Comcast of Illinois/Indiana/Ohio, LLC (“hereinafter, “Comcast”) entered into a cable franchise agreement dated August 12, 2010 that provided Comcast, among other things, a non-exclusive license and franchise to install, operate, maintain, and repair cable equipment in order to market to and provide residents, businesses, units of government, and other persons with television, telephone and internet services; and

**WHEREAS**, by its terms, the aforesaid agreement expires on January 7, 2021; and

**WHEREAS**, the City and Comcast seek to renew the franchise arrangement under the terms, conditions and covenants contained in the City of Urbana, Illinois Franchise Agreement Comcast of Illinois/Indiana/Ohio, LLC in substantially the form of the Exhibit appended hereto and made a part hereof; and

**WHEREAS**, the City Council deems it to be in the public good, safety and welfare that a full range of competitive cable services providing television, telephone and internet services be made available to the residents, businesses, units of government, and other persons within the City.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council, of the City of Urbana, Illinois, as follows:

**Section 1.**

The City Council, shall and hereby does approve the City of Urbana, Illinois Franchise Agreement Comcast of Illinois/Indiana/Ohio, LLC in substantially the form of the Exhibit appended hereto and made a part hereof.

**Section 2.**

The City Council, shall and hereby does authorize the Mayor of the City of Urbana, Illinois to execute the aforesaid cable franchise agreement with Comcast of Illinois/Indiana/Ohio, LLC in substantially the appended hereto and made a part hereof.

**PASSED BY THE CITY COUNCIL** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTENTIONS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Diane Wolfe Marlin, Mayor

**CITY OF URBANA, ILLINOIS**

**FRANCHISE AGREEMENT**

**COMCAST OF ILLINOIS/ INDIANA/ OHIO, LLC**

**(DATE TO BE INSERTED)**

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1 DEFINITION OF TERMS .....	1
SECTION 2 GRANT OF AUTHORITY .....	3
2.1 Nonexclusive Franchise Authority .....	3
2.2 Term of Franchise .....	4
2.3 Renewal.....	4
2.4 Reservation of Authority.....	4
2.5 Competitive Equity .....	4
SECTION 3 CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM .....	5
3.1 City Code .....	5
3.2 Underground .....	5
3.3 Facilities Moved Underground .....	5
3.4 Temporary Disconnection.....	5
3.5 Relocation of Underground Facilities.....	6
3.6 J.U.L.I.E.....	6
3.7 City’s Rights.....	6
3.8 Safety Requirements.....	6
SECTION 4 SERVICE OBLIGATIONS .....	6
4.1 General Service Obligation .....	6
4.2 Programming.....	7
4.3 Annexation .....	7
4.4 Emergency .....	7
4.5 Complimentary Service to Municipal Buildings .....	8
4.6 Cable and Video Customer Protection Law.....	8

# TABLE OF CONTENTS

Page

SECTION 5	OVERSIGHT AND REGULATION BY CITY.....	8
5.1	Franchise Fees .....	8
5.2	Franchise Fees Subject to Audit .....	9
5.3	Not Franchise Fees. Taxes .....	9
5.4	Maintenance of Books, Records, and Files .....	9
SECTION 6	TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE.....	11
SECTION 7	INSURANCE AND INDEMNITY .....	11
7.1	Insurance .....	11
7.2	Indemnification .....	12
SECTION 8	SYSTEM DESCRIPTION .....	13
8.1	Technical Standards .....	13
SECTION 9	ENFORCEMENT OF FRANCHISE .....	13
9.1	Notice of Violation .....	13
9.2	Grantee’s Right to Cure or Respond .....	13
9.3	Public Hearing .....	14
9.4	Enforcement .....	14
9.5	Remedies Not Exclusive.....	14
SECTION 10	ACCESS PROGRAMMING .....	15
10.1	PEG Capacity .....	15
10.2	No Special Expense for PEG Channels.....	16
10.3	PEG Channel Relocation .....	16
10.4	PEG Capital Support.....	16

## TABLE OF CONTENTS

	<b>Page</b>
10.5 Origination Points .....	17
10.6 Future Origination Points.....	17
10.7 Grantee Use of Access Channels.....	17
<b>SECTION 11 MISCELLANEOUS PROVISIONS .....</b>	<b>17</b>
11.1 Force Majeure .....	17
11.2 Notice .....	18
11.3 Entire Agreement .....	18
11.4 Severability .....	18
11.5 Governing Law .....	18
11.6 Modification .....	18
11.7 No Third-Person Beneficiaries .....	19
11.8 Work Performed by Others.....	19
11.9 Rights Cumulative .....	19
11.10 No Waiver of Rights .....	19
11.11 Acceptance.....	19
11.12 Headings; Section Headings .....	19
11.13 Time of Essence.....	19

## **AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Urbana, Illinois (hereinafter, the “City”) and Comcast of Illinois/Indiana/Ohio, LLC (hereinafter, “Grantee”) (collectively, the “Parties” and, generically, a “Party”) this \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”).

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Franchise Agreement is entered into by and between the Parties under the authority and shall be governed by the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”).

### **SECTION 1 Definition of Terms**

For the purpose of this Franchise Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Other terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Basic Cable Service". Means any Service tier that includes the lawful retransmission of local television broadcast signals and any public, educational and governmental (“PEG”) access programming.

“Cable Act” or “Act”. Means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

"Cable Service” or “Service”. Means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

“Cable System,” “System,” “Cable Communications System,” or “CATV System”. Means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated 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 1 or more television broadcast



stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier that is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system, 47 USC 522.

“Channel” or “Cable Channel”. Means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the FCC by regulation.

“City”. Means the City of Urbana, Illinois a municipal corporation, in the State of Illinois, acting by and through its City Council, or its lawfully appointed designee.

“City Council”. Means the governing body of the City of Urbana, Illinois.

“City Code”. Means the Municipal Code of Urbana, Illinois.

“Days.” Means calendar days unless otherwise specified.

“Drop”. Means the cable that connects the ground block on a home or building to the nearest feeder cable of the System.

“Effective Date”. Means the date as indicated on the first page of this agreement.

“FCC”. Means the Federal Communications Commission or successor governmental entity thereto.

“Franchise”. Means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, that authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement”. Shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” or “Service Area”. Means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee”. Shall mean Comcast of Illinois/Indiana/Ohio, LLC.

“Gross Revenue”. Means any and all revenue derived by Grantee from or in connection with the operation of the Cable System to provide Cable Services in the Franchise Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, Franchise Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees,

advertising revenue (excluding advertising sales commissions paid to unaffiliated third parties), converter rental fees and lockout device fees. Gross Revenue shall not include refundable deposits, bad debt, investment income, nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity (a Franchise Fee is not such a tax, fee or assessment). The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

“Installation”. Means the connection, by or on behalf of the Grantee, of the System from feeder cable to the point of connection with the Subscriber converter or television receiver or other terminal equipment.

“PEG”. Means public, educational, and governmental access channel(s).

“Person”. Means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public Building”. Means, pursuant to 220 ILCS 5/22-501(f), all local government buildings, public libraries, and public primary and secondary schools, whether owned or leased by that local unit of government.

“Right-of-Way” or “Public Way”. Means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Right-of-Way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.

“Right-of-Way or Public Way Regulations”. Means any ordinance or policy of general applicability regarding the regulation, management and use of Rights-of Way in City, including registration and permitting requirements, which shall not be specific to the Cable Television System, this Franchise or Grantee.

“Subscriber”. Means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“Video Programming”. Means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

## **SECTION 2 Grant of Authority**

2.1 Nonexclusive Franchise Authority. The City hereby authorizes Grantee to occupy or use the Right-of-Way subject to 1) the provisions of this non-exclusive Franchise Agreement to provide Cable Service within the Franchise Area; and 2) all applicable provisions of the City Code and Right-of-Way or Public Way Regulations.

Nothing in this Franchise Agreement shall be construed to prohibit the Grantee from providing services other than Cable Services to the extent not prohibited by applicable law. The

City hereby reserves all of its rights to regulate such other services to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be 10 years from the Effective Date unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement shall replace all existing franchise agreements, including the prior Franchise, with the Grantee, regardless of whether said franchise agreements are in effect.

2.3 Renewal. Any renewal of this Franchise Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. The terms of this Franchise Agreement shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City.

2.4.1 The Grantee, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area in compliance with the City Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the City Code, Right-of-Way or Public Way Regulations and lawful applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or Ordinances, Right-of-Way or Public Way Regulations or lawful applicable regulations of the City and B) this Franchise Agreement, the express provisions of this Franchise Agreement shall govern.

2.4.2 Subject to express federal and State preemption, the material terms and conditions contained in this Franchise Agreement may not be unilaterally altered by the City through subsequent amendment to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power unless expressly provided herein. Grantee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code. Grantee reserves all rights it may have to challenge such lawful modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any City Codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

## 2.5 Competitive Equity.

2.5.1 Illinois Level Playing Field Statute. In the event the City grants an additional Franchise to use and occupy the public Right-of-Way for the purposes of operating a cable system, the additional Franchise shall be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11, if applicable.

2.5.2 Competitive Proposal to be Sent to Grantee. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.

### **SECTION 3 Construction and Maintenance of the Cable System**

Grantee shall comply with the provisions of Chapter 20 Article IV and Article V of the City of Urbana Municipal Code, as may be amended from time to time.

3.1 City Code. All construction and maintenance of the Cable System shall be commenced, undertaken and completed in accordance with the City Code regarding Right-of-Way usage.

3.2 Underground. At the time of Cable System construction in those areas of the City where the transmission lines or distribution facilities of the public utilities are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

3.3 Facilities Moved Underground. In the event the City requires users of the Right-of-Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public funds allocated for the project to the same extent as such funds are made available to other users of the Right-of-Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the City shall not be considered to be public funds.

3.3.1. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of Grantee's facilities or where the Grantee is entitled to full or partial reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received the appropriate payment, as the case may be, for the relocation work.

3.4 Temporary Disconnection. The Grantee agrees that it shall, upon ninety (90) days' written notice by the City and at the Grantee's own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the City because of public health, safety and welfare improvements as deemed necessary by the City. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other utilities, licensees or franchisees of the Right-of-Way or in the event that such reimbursement is not available to pass the costs through to its subscribers if permissible under applicable law.

3.5 Relocation of Underground Facilities. In the event all users of the Right-of-Way are required to relocate underground facilities by the City, Grantee shall participate in the planning for relocation of its underground facilities, if any, contemporaneously with other utilities. Grantee shall be reimbursed its relocation costs from public funds allocated for the project to the same extent as such funds are made available to other users of the Right-of-Way. Grantee shall relocate its underground facilities upon at least sixty (60) days' written notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

3.6 J.U.L.I.E. In accordance with industry practice, Grantee shall participate in the J.U.L.I.E (Joint Utility Locating Information for Excavators) system.

3.7 City's Rights. Nothing in this Franchise shall be construed to prevent the City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Public Way; constructing, laying down, repairing, maintaining or relocating any water mains or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

3.8 Safety Requirements. With respect to the Cable System of Grantee located in the Right-of-Way and utilized to provide Cable Service, the following shall be required:

3.8.1 Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all applicable state laws, including Title 83, Part 305 of the Illinois Administrative Code, and local codes where generally applicable, as adopted by the City, and as they may be amended.

3.8.2 Antennas. Antennas and their supporting structures (towers) if any shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other generally applicable state and Municipal laws, codes and regulations.

**SECTION 4 Service Obligations**

4.1 General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density equivalent is at least thirty (30) dwelling units per one (1) mile and is within one (1) mile of the existing Cable System. Subject to the aforementioned density requirement in Section 4.1 of this agreement, Grantee shall offer Cable Service to all new residences located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

4.1.1 Non-standard Installations. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a Drop or line extension in excess of the above standards. Any such additional charge shall be

computed on a time plus materials basis plus a reasonable rate of return to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2 Programming. The Grantee agrees to provide cable programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Arts, Culture and Performing Arts	News & Information	Educational

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.3 Annexation. In the event City annexes territory that is not within the City limits on the Effective Date, the City shall provide written notice to Grantee and Grantee shall provide Cable Services to the newly annexed area as follows:

4.3.1 Annexed area has no Cable Services. If the newly annexed area does not receive any Cable Services, Grantee and City shall meet within thirty (30) days to reach an agreement on the time deadline to serve the new area. Grantee shall serve the new area as soon as possible, pursuant to the terms of this Franchise Agreement;

4.3.2 Annexed area has Cable Services from another Cable operator. If the newly annexed area receives Cable Services from another Cable operator, Grantee shall have the right, but not the requirement to provide Cable Services to the area. In these circumstances, Grantee agrees that the City would not be required to force any cable operator serving the newly annexed area to serve the entire Franchise Area in order to obtain a Franchise Agreement to continue serving the residents in the newly annexed area;

4.3.3 Annexed area is served by Grantee or its affiliate. If the newly annexed area is served by Grantee or its affiliate, the newly annexed area will be subject to the provisions of the franchise previously covering that area in accordance with 55 ILCS 5/5-1095. Upon expiration of the franchise covering the newly annexed area, Grantee shall provide Subscribers in the newly annexed area with the PEG channels required under this Franchise Agreement in Section 10.1. Grantee agrees that if the annexation occurs in Champaign County, Grantee will provide Subscribers with the PEG channels required under this Franchise Agreement without cost to the City. In the event the Grantee is required to reconfigure its system or head end in order to provide the PEG channels, the Grantee shall provide the City with a written notice detailing the necessary expenses for the reconfiguration and the proposed timeline for the deduction of said expenses from the PEG capital fee required under this Franchise Agreement in Section 10.4 or the Franchise Fee required under this Franchise Agreement in Section 5. The City shall have the discretion to provide the Subscribers in the newly annexed areas with the PEG channels required under this franchise agreement in Section 10.1 and will notify the Grantee in writing of its decision prior to the proposed reconfiguration of the system or head end.

4.4 Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage

any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages. Notwithstanding the above, Grantee reserves the right to assert a right of reimbursement or compensation from any responsible party. During cases of emergency, the City shall contact the Grantee at 866-632-3732 prior to taking any action.

4.4.1 Emergency Alert System (EAS). At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an Emergency Alert System ("EAS") consistent with applicable federal law and regulation including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time.

4.5 Complimentary Service to Municipal Buildings. The Grantee hereby agrees to provide Basic Cable Service (or its current equivalent) and one Digital Transport Adapter (or its current equivalent if equipment is necessary to receive the service) to one outlet at each of the locations specified in Attachment A. The City shall notify Grantee of its election to be invoiced at standard rates for these services and equipment or have the charges deducted from the franchise fee payment due the City. In the event the FCC Third 621 Order is reversed on appeal (pending at the 6<sup>th</sup> Circuit at the time of this Agreement) and that reversal becomes final, then City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary Basic Cable Service, and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6 Cable and Video Customer Protection Law. The City and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.* Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*

## **SECTION 5 Oversight and Regulation by City**

5.1 Franchise Fees. The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues. The payment of the franchise fees shall be made on a monthly basis and shall be due thirty (30) days after the close of each calendar month. No more than twice per year and upon written request from the City, the Grantee shall be required to provide a detailed written report prepared by a representative of the Grantee showing the basis and reasonable background support for the computation of the franchise fees paid during that period. Any undisputed franchise fee payment that remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent franchise fee payments, Grantee shall make such payments including interest from the due date of the delinquent payment at an annual rate equal to the prime lending rate as quoted by Chase Bank U.S.A. or its successor, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within sixty (60) days of the receipt of written notice from Grantee.

5.1.1 Change in Amounts. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible franchise fee of five percent (5%) of Gross

Revenues. In the event that a change in the Cable Act would allow the City to increase the franchise fee above five percent (5%), and the City actually proposes to increase the franchise fee in exercise of such authority, the City may amend the franchise fee percentage. Following the determination to increase the franchise fee and enactment of an ordinance enabling the same, the City shall notify the Grantee of its intent to collect the increased franchise fee, and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased franchise fee. In the event that the City increases said franchise fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2 Bundled Services. Unless otherwise provided under applicable law, for purposes of the franchise fee to be paid by Grantee under this Franchise Agreement, in the case of Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications of Grantee, the fee shall be applied to the Gross Revenue attributable to Grantee's Cable Service, as reflected on the books and records of Grantee kept in the regular course of business in accordance with generally accepted accounting principles and applicable law.

5.2 Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.2.1. In accordance with 65 ILCS 5/11-42-11.05 (k), the City shall provide on an annual basis, a complete list of addresses within the corporate limits of the City. If an address is not included in the list or if no list is provided, the Grantee shall be held harmless for any franchise fee underpayments (including penalty and interest) from situsing errors.

### 5.3 Not Franchise Fees. Taxes.

5.3.1 Franchise fee not a Tax. Grantee acknowledges and agrees that the franchise fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges that do not fall within the definition of a franchise fee under 47 U.S.C. § 542.

5.3.2 No Deduction or Offset against Franchise Fees. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a franchise fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the franchise fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

### 5.4 Maintenance of Books, Records, and Files.



5.4.1 Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of franchise fees as set forth in Section 5.2. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City who have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the City has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

5.4.2 Book and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee’s compliance with the provisions of this Franchise Agreement. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of four (4) years. The Grantee shall not deny the City access to any of the Grantee’s records on the basis that the Grantee’s records are under the control of any parent corporation, affiliated entity or a third person. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at the Grantee’s local offices or at one of Grantee’s offices more convenient to City or its duly authorized agent.

5.4.3 Preservation of Confidential Information. Grantee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise Agreement, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for City’s monitoring and enforcement of Franchise obligations are

provided to City. To the extent that Grantee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary in accordance with state and federal law.

## **SECTION 6 Transfer of Cable System or Franchise or Control of Grantee**

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.2. No transfer of control of the Grantee, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

6.3. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition of granting any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the City's consent thereto in the manner described in Section 6 above.

## **SECTION 7 Insurance and Indemnity**

7.1 Insurance. Within thirty (30) days of the Effective Date of this Franchise Agreement, the Grantee shall, at its sole cost and expense take out and maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds. Such policy or policies shall be in the minimum amount of Three Million Dollars (\$3,000,000.00)

for bodily injury or death to any one person, and Three Million Dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City (ten (10) days' notice for cancellation due to non-payment of premium), which notice may be give via email to [uptv@urbanaillinois.us](mailto:uptv@urbanaillinois.us). The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. The policy shall provide coverage on an "occurrence" basis. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage. Property damage liability shall be afforded. City shall be named as an additional insured on the general liability policy using ISO additional insured endorsement 20 26 or substitute providing equivalent coverage

An endorsement or provision shall be provided that states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage with respect to loses for which Grantee is responsible hereunder. Standard form of cross-liability shall be afforded. Grantee shall provide certificates of insurance to the City showing that the above enumerated policies of insurance are in force. All insurance policies shall be written with insurance companies qualified to do business in Illinois and have a current rating of A-VIII or better by A.M. Best.

**7.2 Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Cable System within the City. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City shall be the responsibility of the City.

**7.2.1 No Waiver of Rights.** City does not, and shall not, waive any rights against Grantee that it may have by reason of the indemnification provided for in this Franchise Agreement, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise Agreement.

**7.2.2 Impact of Insurance Policy on indemnification.** The indemnification of City by Grantee provided for in this Franchise Agreement shall apply to all damages and claims for

damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise Agreement, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

7.2.3 Impact of willful misconduct or negligence on indemnification. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its elected or appointed officers, employees and agents. To the extent permissible under State law and without waiver of any affirmative defense, the City shall indemnify the Grantee for any liabilities, damages, costs or expenses resulting from misconduct or negligence of the City's PEG programming. The Grantee shall give the City written notice of its obligation to indemnify and defend the Grantee within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Grantee determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantee. The City shall at all times retain control over the settlement of any claim or action subject to the aforementioned indemnification. The City's indemnification of Grantee shall in no way serve as a waiver or modification of any statutory cap on municipal liability that may exist under applicable law.

## **SECTION 8 System Description**

8.1 Technical Standards. The technical standards used in the operation of the Cable System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2) at such time that the design, construction and/or maintenance is performed.

## **SECTION 9 Enforcement of Franchise**

9.1 Notice of Violation. If at any time the City believes that Grantee has not substantially complied with the terms of the Franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the issue, the City shall then notify Grantee in writing of the exact nature of the alleged noncompliance (the "Noncompliance Notice").

9.2 Grantee's Right to Cure or Respond. Grantee shall have: 1) fifteen (15) business days from receipt of the Noncompliance Notice to respond to the City, if Grantee contests (in whole or in part) the assertion of noncompliance; or 2) thirty (30) days from receipt of the Noncompliance Notice to cure such noncompliance; or 3) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate all reasonable steps to remedy such noncompliance as quickly as possible and notify the City of the steps being taken and the projected date by which cure is projected to be completed. Upon cure of any noncompliance, the Grantee shall notify the City in writing and the City shall provide written confirmation that such cure has been accepted by the City.

9.3 Public Hearing. The City shall schedule a public hearing if the City seeks to continue its investigation into the alleged noncompliance in the event that: (1) Grantee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Section 9, or (2) in the event that Grantee has not remedied the alleged noncompliance within the cure period specified in Section 9.2(2) above or projected cure period in Section 9.2 (3) above. The City shall provide Grantee at least twenty-one (21) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Grantee the opportunity to be heard.

9.4. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

9.4.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.4.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least twenty-one (21) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the City shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 11.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision.

9.5. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 4.6 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with federal and State of Illinois laws concerning consumer protection and Urbana City ordinances concerning construction and installation of facilities in the City's Rights-of-Way.

Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the City.

## **SECTION 10 Access Programming**

10.1 PEG Capacity. Grantee shall provide capacity for the City of Urbana and City of Champaign's joint operation of four (4) channels dedicated for PEG programming, all four of which will be carried on the Basic Service Tier in both cities in a manner consistent with applicable law, without expense to the City. Grantee shall provide capacity for the City's four (4) PEG Channels on Grantee's Basic Cable Service tier for the City's noncommercial public, educational and governmental ("PEG") programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the City utilizes four (4) PEG Channels. By mutual consent of the Cities of Champaign and Urbana; the City of Champaign programs one of the four Channels and this Channel is made available in the City of Urbana and at no charge by the Grantee.

10.1.1 Fifth PEG Channel. Upon the Effective Date of this Franchise Agreement, the City may request and Grantee shall provide capacity for one (1) additional PEG access channel to be utilized for noncommercial public, educational and governmental programming and to be shared with the City of Champaign. The fifth PEG access channel will be carried on the Basic Service Tier in a manner consistent to applicable law, without special expense to the City. No later than thirty (30) days after receiving the written request from the City for the fifth PEG channel, Grantee shall provide the City with a written estimate of Grantee's timeline, plans for activation of the channel and expenses related to the activation of the channel. These expenses may include, but not necessarily be limited to, construction of a fiber optic return line and any equipment needed to transmit and receive the programming at the Grantee's head end. The City agrees to reimburse the Grantee for all documented expenses related to the activation of the additional access channel. Grantee shall not assess the City a monthly fee for the lease of equipment or transmission facilities in order to provide the additional PEG access channel on the channel line-up carried on the Cable System. The fifth PEG channel will be shared between the Cities of Champaign and Urbana.

10.1.2 PEG Technical Quality. The Grantee shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels; provided, however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming.

10.1.3 Grantee Ownership of PEG Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. However, the PEG Channel(s) is (are), and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG Channel(s) among and between different non-commercial uses and users for the purpose of cablecasting noncommercial PEG programming.

10.1.4 Noncommercial use of PEG. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (1) the identification of financial

supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, public educational institutions, which include Parkland College and the University of Illinois, which offer telecourses over an educational PEG Channel.

10.2 No Special Expense for PEG Channels. The PEG channels must be receivable by Subscribers without special expense, other than the expense required to receive Basic Cable Service or digital Service, as applicable. Absent any other agreement to the contrary, nothing herein precludes Grantee charging for equipment needed to receive Basic Cable Service.

10.3 PEG Channel Relocation. In the event the Grantee relocates the PEG Channel(s) to a different dial position, the Grantee shall provide the City with at least thirty-one (31) days' notice of the relocation. In conjunction with any occurrence of PEG Channel(s) relocation, Grantee shall notify its Subscribers of such relocation in the form of a bill message, or other form of written communication in accordance with applicable law, sent to all subscribers and will include notification of the PEG Channel(s) relocation in direct-mail or newspaper notifications. The Grantee may send such notifications in association with other changes taking place at the same time. To the extent reasonably available, the moved PEG Channels will be located in a numerical consecutive order at the new dial position.

10.4 PEG Capital Support. Upon the Effective Date of this Franchise Agreement, Grantee shall continue to collect a PEG capital fee equal to zero point seventy-five percent (0.75%) of Grantee's Gross Revenues from all Subscribers in the Service Area and shall pay to the City an amount equal to zero point seventy-five percent (0.75%) of Grantee's Gross Revenues to support PEG capital purchases. The PEG capital fee may be passed through to Subscribers pursuant to Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall make the PEG Capital Fee payments to the City at the same time and in the same manner as Franchise Fee payments.

The City shall be permitted to hold all or a portion of the PEG capital fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, provided that if the entire amount is not expended during the term of this agreement, any remaining funds shall be credited against PEG capital requests from the City in subsequent franchise renewals. Moreover, if the City chooses to borrow from itself or a financial institution revenue for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG capital fee.

10.4.1. On an annual basis, the City shall provide the Grantee with a report detailing how the prior year's funding was spent or confirming it is being held in a capital reserve account for future PEG capital needs.

10.4.2. Within thirty (30) days of the Effective Date, the City shall provide to the Grantee a detailed and itemized description of the planned utilization of the PEG Capital Support fee for PEG Channel facilities and/ or equipment. The Parties recognize the actual utilization of the PEG Capital Support fee may vary from this planning document.

10.5 Origination Points. Grantee shall maintain throughout the life of this Franchise Agreement all existing fiber return lines that are in place as of the Effective Date as stated below in order to enable the distribution of PEG access programming to Grantee's residential Subscribers. Grantee shall ensure that the System is capable of cablecasting live programming (i.e. program origination capability) from the following locations:

10.5.1 Urbana City Building. – 400 South Vine Street, Urbana

10.5.2 Urbana School District Administration Building. – 205 North Race Street, Urbana, IL.

10.5.3 University of Illinois. – 300 N. Goodwin Avenue, Urbana, IL.

10.6 Future Origination Points. At such time that the City determines that it wants the capacity to allow subscribers in the City to receive PEG programming (video and character generated) that may originate from schools, City facilities and/or other government facilities (other than those indicated above ); or at such time that the City determines that it wants to establish or change a location from which PEG programming is originated; or in the event the City wants to upgrade the connection to Grantee from an existing signal point of origination, the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse Grantee for its expenditure, Grantee will implement any necessary system changes within a reasonable period of time.

10.7 Grantee Use of Access Channels. Pursuant to 47 U.S.C. 531(d) and because the City and Grantee agree that a blank or under utilized Channel is not in the public interest, the City shall (1) develop rules and procedures under which the Grantee is permitted to use Channel capacity for the provision of other services if such Channel capacity is not being used for the purposes designated, and (2) develop rules and procedures under which such permitted use shall cease. The above referenced rules shall be provided to the Grantee no later than twelve (12) months following the execution of this Franchise Agreement

## **SECTION 11 Miscellaneous Provisions**

11.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by Acts of God including but not limited to tornados, floods, earthquakes, and unusually severe rain or snow storms that make travel difficult; strikes, riots, wars, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.



11.2 Notice. Any notification that requires a response or action from a Party to this Franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this Franchise, shall be made in writing and shall be sufficiently given and served upon the other Party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Urbana  
400 South Vine St.  
Urbana, Illinois 61801  
Attn: City Attorney

To the Grantee:

Comcast  
1500 McConnor Pkwy  
Schaumburg, Illinois 60173  
Attn: Vice President of Government Affairs

With non-binding courtesy copies to: Comcast

1701 John F. Kennedy Blvd. Philadelphia,  
PA 19103  
ATTN: Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the Parties, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above.

11.3 Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral

11.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.5 Governing Law. This Franchise Agreement shall be construed and interpreted according to the laws of the State of Illinois and federal law, as applicable. Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the court of proper jurisdiction in the County of Champaign, Illinois

11.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the

City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City Council, as required by applicable law.

11.7 No Third-Person Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-person beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

11.8 Work Performed by Others. All applicable obligations of this Franchise Agreement shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise Agreement, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a Cable System or provide Cable Service within the City. Upon written request, Grantee shall provide notice to City of the name(s) and address(es) of any entity performing any work or services pursuant to the provisions of this Franchise Agreement, other than Grantee.

11.9 Rights Cumulative. All rights and remedies given to City or Grantee by this Franchise Agreement or retained by City or Grantee herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City or Grantee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City or Grantee and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

11.10 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, City or Grantee may have under federal or state law unless such waiver is expressly stated herein.

11.11 Acceptance. Grantee shall accept this Franchise Agreement within thirty (30) days of receipt of an executed copy from the City, unless the time for acceptance is extended by City.

11.12 Headings; Section Headings. The headings of Sections in this Franchise Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Franchise Agreement.

11.13 Time of Essence. With regard to all dates and time periods set forth or referred to in this Franchise Agreement, time is of the essence.

This Franchise Agreement will be properly executed and acknowledged by Grantee and delivered to City. With its acceptance, Grantee shall also deliver insurance certificates within 30 days, as required herein that have not previously been delivered.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the City of Urbana:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For Comcast of Illinois/ Indiana/  
Ohio, LLC**

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

Name: John Crowley \_\_\_\_\_

Title: Regional Senior Vice-President

Date: \_\_\_\_\_

## **Attachment A**

1. City of Urbana, 108 E. Water St., Urbana IL 61801
2. Fire Station 1, 402 S. Vine St., Urbana, IL, 61802
3. Fire Department 2, 2103 Philo Rd., Urbana, IL, 61802
4. Fire Department 3, 1407 N. Lincoln Ave., Urbana, IL, 61801
5. Fire Department 4, 1105 W. Gregory St., Urbana, IL, 61801
6. Urbana Garage (Public Works), 706 S. Glover St., Urbana, IL, 61801
7. Urbana City Hall, 400 S. Vine St. Apt 1 of 3, Urbana, IL, 61801
8. Urbana Police Department, 400 S. Vine St. Apt 2 of 3, Urbana, IL, 61801
9. Urbana City Hall ESDA, 400 S. Vine St. Apt 3 of 3, Urbana, IL, 61801
10. Urbana Recycling Center, 1210 E. University Ave., Urbana, IL, 61802