



Takoma Park City Council Meeting – May 18, 2016 Agenda Item 6

Voting Session

Resolution Giving Direction on the Agreements with Montgomery County Regarding Cable Franchises

Recommended Council Action

Approve Resolution directing the City Manager to sign the two Agreements with Montgomery County concerning implementation of the Comcast and Verizon cable franchises.

Context With Key Issues

The City has non-exclusive cable franchise agreements with Comcast, Verizon and Starpower (doing business as RCN). The City of Takoma Park has had agreements with Montgomery County to administer and enforce the terms of the cable franchise agreements within the City of Takoma Park since at least 1998. With recent renegotiations of the franchise agreements with Comcast and RCN that allow for greater flexibility in the use of PEG (Public, Educational, and Government) funds, it was also seen in the best interest of Montgomery County and the City of Takoma Park to revise the allocation of capital and operating funds between the entities.

The new agreements are very similar to past agreements with Montgomery County. They provide for:

- a channel for use by the City of Takoma Park and, with Comcast, shared access (with other municipalities) to an HD channel;
- the City to receive 70% of the franchise fees, with 30% of the fees going to Montgomery County to pay for administration of the franchise (which involves consumer advocacy and protection, corporate adherence to franchise agreement terms, and distribution of funds);
- from Verizon, 1/30 of the PEG capital grant that is restricted to capital purchases and, from Comcast, 1/9 of the PEG capital grant funds which may be used for either capital or operating expenses; in either case, these funds may only be used for cable, PEG or Institutional Network purposes; and
- from Verizon, five free drops for cable service for public buildings.

The primary change from the past agreements is in the distribution of PEG capital grant funds. The two agreements work together to allow a greater amount of needed operating funds to come to Takoma Park; the smaller amount of capital funds will be sufficient to completely replace City TV studio facilities and equipment every five years.

With the new Comcast franchise agreement, under the previous distribution terms, the City would have received \$106,129 in PEG-based operating revenue from Comcast (providing the City matched the operating funds with \$70,753 in other City funds) and \$1,054,470 in PEG-based capital revenue from Verizon this year. Under the new terms, the City will receive \$444,951 in PEG-based operating revenue from Comcast (with no match required) and \$217,228 in PEG-based capital revenue from Verizon. With this arrangement, Montgomery County gains \$366,725 in PEG-based capital revenue

that it needs for fibernet connections to schools and other public facilities and the City gains \$409,575 in operating funds it needs to pay for cable-related staff and operating expenses.

In the language in both agreements, Montgomery County does not agree to negotiate future franchise agreements on behalf of the City of Takoma Park, although it is noted that the municipality finds that having the County do the negotiation is in its interest. (Negotiation of franchise agreements is expensive, staff-intensive and legally complex.) Because the commitment to do so is not included in the agreements, but it is the understanding of the municipalities and of County staff that the County will take the lead on negotiations in the future, the resolutions note that the agreements are being signed with the understanding and expectation that the County will continue to negotiate franchise agreements on behalf of the municipalities.

Council Priority

A Financially Sustainable Government

Environmental Impact of Action

N/A

Fiscal Impact of Action

A gain of \$409,575 in annual cable-related operating funds and a loss of \$713,748 in annual cable-related capital funds.

Attachments and Links

- Draft Resolution Authorizing an Agreement with Montgomery County Concerning the Verizon Cable Franchise
- Draft Resolution Authorizing an Agreement with Montgomery County Concerning the Comcast Cable Franchise
- Draft Agreement with Montgomery County Concerning the Verizon Cable Franchise
- Draft Agreement with Montgomery County Concerning the Comcast Cable Franchise

Introduced by:

**CITY OF TAKOMA PARK, MARYLAND
RESOLUTION # 2016-XX**

**AUTHORIZING APPROVAL OF AN AMENDED AGREEMENT WITH MONTGOMERY
COUNTY CONCERNING THE VERIZON CABLE FRANCHISE**

WHEREAS, pursuant to §5-204(d) of the Local Government Article, Annotated Code of Maryland, the City may grant a franchise for a cable television system; and

WHEREAS, Montgomery County, Maryland and the City granted a franchise for the operation of a cable communications system within the unincorporated portions of Montgomery County and the City upon the terms and conditions set forth in a certain Cable Franchise Agreement by and between Montgomery County, Maryland and Verizon Maryland, Inc.; and

WHEREAS, the City found that it is in the best interest of its residents that awarding or renewing a cable communications franchise and administration and regulation of the Verizon cable system, within the boundaries of the City, be undertaken by the County and to this end has enacted Section 17.04.010 of the City Code, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the City; and

WHEREAS, on December 11, 2006, the City Council adopted Resolution 2006-83, which approved an Agreement between the City and Montgomery County, Maryland, for the Administration and Regulation of the Verizon Franchise within the City's Corporate Limits;

WHEREAS, by the attached Amended Agreement to Implement the Verizon Cable Franchise Between Montgomery County, Maryland and the City of Takoma Park, Maryland, the City and the County replace the Agreement between the City and Montgomery County, Maryland, for the Administration and Regulation of the Verizon Franchise in its entirety and have set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance, if any, and implement Chapter 8A and the Verizon cable franchise, to include without limitation awarding or renewing a cable communications franchise; and

WHEREAS, the Council has determined that it is in the public interest to adopt the Amended Agreement to Implement the Verizon Cable Franchise Between Montgomery County, Maryland and the City of Takoma Park, Maryland to allow greater flexibility in the use of the PEG funds for operations in addition to capital costs; and.

WHEREAS, the Council understands that the County Executive recognizes that negotiation of franchise agreements is part of the administration service for which Takoma Park and other municipalities pay 30% of the franchise fees pursuant to this Agreement and expects that this function will continue for the duration of this Agreement; and

WHEREAS, the County has agreed to reimburse the City for legal fees incurred in conjunction with the negotiation of the attached Amended Agreement, up to \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Takoma Park, Maryland that the City Manager is authorized to sign the Amended Agreement to Implement the Verizon Cable Franchise Between Montgomery County, Maryland and the City of Takoma Park, Maryland in substantially the form attached, provided however that the County concurrently agrees to reimburse the City for up to \$5,000.000 of legal fees incurred in conjunction with the negotiation of this Amended Agreement.

ADOPTED this _____ day of May, 2016.

AYE:

NAY:

ABSTAIN:

ABSENT:

**AMENDED AGREEMENT TO IMPLEMENT THE VERIZON CABLE FRANCHISE
BETWEEN**

MONTGOMERY COUNTY, MARYLAND

and

THE CITY OF TAKOMA PARK, MARYLAND

THIS AMENDED AGREEMENT is entered into as of the ____ day of _____, 2016, by and between Montgomery County, Maryland, a body corporate and politic (hereinafter referred to as the "County"), and the City of Takoma Park, Maryland, a municipal corporation organized pursuant to Article XI-E of the Maryland Constitution (hereinafter referred to as the "Municipality") (collectively referred to as "the Parties").

WITNESSETH:

WHEREAS, the County enacted Chapter 8A of the Montgomery County Code (2014), as amended, entitled "Cable Communications," which allows for the grant of one or more franchises for the construction and operation of a cable communications system in the County, and for the administration and regulation of the cable communications system by the County during the franchise term; and

WHEREAS, on or about October 30, 2006, the County awarded a cable franchise within the County to Verizon Maryland, Inc. (hereinafter referred to as "Verizon") and approved Verizon's franchise agreement, pursuant to the provisions of Chapter 8A; and

WHEREAS, the Municipality has the express authority to grant one or more exclusive or nonexclusive franchises for a cable television system within its corporate boundaries, pursuant to Sections 1-708 and 5-204(d) of the Local Government Article; and

WHEREAS, the Municipality finds that it is in the best interest of its residents for cable systems to be constructed and operated within its corporate limits; and

WHEREAS, the Municipality finds that it is in the best interest of its residents that the awarding or renewing a cable communications franchise and administration and regulation of the Verizon cable system, within the boundaries of the Municipality, be undertaken by the County and to this end has either (i) enacted an Ordinance, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the Municipality, or (ii) not exempted itself by ordinance from Chapter 8A and therefore Chapter 8A applies in the Municipality pursuant to Section 4-111 of the Local Government Article; and

WHEREAS, the Municipality's Cable Communications Ordinance, if any, provides that the County is requested and authorized to administer and enforce said Ordinance within the Municipality; and

WHEREAS, the Parties previously entered into an Agreement in 2006 allowing the County to administer the Ordinance and otherwise addressing the implementation of the franchise granted to Verizon; and

WHEREAS, the Parties desire to amend that prior agreement and replace it with this Amended Agreement; and

WHEREAS, by this Amended Agreement, the Parties have set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance, if any, and implement Chapter 8A and the Verizon cable franchise.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and the Municipality agree as follows:

1. The Municipality requests that the County administer and enforce Chapter 8A within the corporate limits of the Municipality, and authorizes the County to act as the agent of the Municipality in connection with the negotiation, administration and enforcement of the approved cable franchise agreement to be effective within the corporate limits of the Municipality. The County agrees to administer such franchise within the Municipality's corporate boundaries as an agent of the Municipality.

2. To the extent permitted by law and by the franchise agreement, the following obligations shall be enforced by the County and enforceable by the Municipality:

(a) The cable communications system shall be constructed to serve the entire Municipality.

(b) The Municipality shall not be discriminated against in the array of channels and services offered by the franchisee, or in the rates charged to customers in the Municipality. This provision applies only insofar as the County is authorized to regulate the franchisee's channels, services, and rates.

(c) The following minimum access channel capacity shall be available for programming by the Municipality and the other Participating Municipalities on the lowest-cost tier of service provided by the franchisee:

(i) Rockville and Takoma Park shall each have one digital access channel, pursuant to Section 6.1.1 of the franchise agreement.

(ii) The other Participating Municipalities in Montgomery County shall share one common digital access channel, pursuant to Section 6.1.1 of the franchise agreement.

(d) If the franchisee changes the channel designations for any municipal channel, the County will divide the cost reimbursement provided for in Section 6.1.2.2 of the franchise agreement equally among the affected Participating Municipalities without any withholding by the County for administration or other reasons.

(e) All waivers and indemnifications obtained by the County from the franchisee shall inure to the benefit of the Municipality.

3. Franchise fees shall be distributed to the Municipality in accordance with Section 8A-29 of the Montgomery County Code. If Section 8A-29 is amended to allow the County to retain more than thirty (30) percent of the Municipality's franchise fees as compensation for the administration of the franchise within the Municipality, the Municipality may terminate this agreement upon thirty (30) days written notice to the County. The distribution shall be made within thirty (30) days after receipt by the County of the franchise fees from the franchisee.

4. Upon the terms and conditions set forth in section 6.2 of the franchise agreement, the County shall distribute a portion of the capital grant from the franchisee as follows: one-seventh (1/7) to the City of Rockville; one-thirtieth (1/30) to the City of Takoma Park; and one-thirtieth (1/30) to the Montgomery County Chapter of the Maryland Municipal League, or its successor in interest, in a manner directed by the Montgomery County Chapter of the Maryland Municipal League. The distribution of each installment of the capital grant shall be made by the County within thirty (30) days after the County receives the grant. The County's obligation to

distribute the capital grant as described above shall not be extinguished as to the signatory of this Agreement if any of the other Participating Municipalities terminates this Agreement. Any portion of the capital grant that is not distributed by the County will be retained by the County for its use.

5. Each Participating Municipality shall be entitled to a free “drop” on the terms set forth in Section 3.3 of the franchise agreement regarding cable service for public buildings, except that the cities of Rockville and Takoma Park each shall be entitled to five (5) free drops and the Town of Kensington and Chevy Chase Village shall be entitled to two (2) free drops. Each Municipality shall make its request through the County, and the County shall make the request on behalf of the Municipality to the franchisee within five (5) days of receiving the request from the Municipality.

6. Because the franchisee’s failure to comply with the provisions of the franchise agreement will result in injury to the Municipality, the extent of which will be difficult to determine, and because the franchise agreement provides for liquidated damages for certain breaches of the franchise agreement, the County will collect, on behalf of the affected Participating Municipality, liquidated damages in accordance with Section 13.6 of the franchise agreement and shall distribute the Municipality’s proportionate share to the Municipality as permitted by law, Council appropriation, and the franchise agreement. The foregoing shall apply to liquidated damages payable pursuant to Section 13.6 if the breach directly harms the Municipality.

7. With the exception of paragraph 9, this Agreement shall expire and be of no further force and effect upon revocation of the franchise by the County or the Municipality, or expiration of the franchise effective within the Municipality, subject to any extension of, or

continued performance under, the said franchise; provided, however, that either party shall continue to have the right to assert any claims with respect to any obligation or arising out of any breach of this Agreement occurring prior to the revocation or expiration hereof. The franchise within the Municipality shall not be renewed or extended by the County without the approval of the Municipality.

8. In the event of a material breach of this Agreement by either party, the party not in default shall give the defaulting party notice of such breach and an opportunity to cure the same for a period of thirty (30) days following the giving of such notice. If the defaulting party does not cure the material breach within thirty (30) days of the date of such notice, this Agreement may be terminated by the non-defaulting party upon ten (10) days' written notice to the party committing a material breach hereof. Any notice pursuant to this paragraph of the Agreement shall be hand delivered, with receipt acknowledged, or mailed by certified mail, restricted delivery, addressed in the case of the County, to: Isiah Leggett, County Executive (or successor), Executive Office Building, 101 Monroe Street, Maryland 20850, in the case of the Municipality, to: City Manager, City of Takoma Park, Maryland, 7500 Maple Avenue, Takoma Park, MD 20912. Termination of this Agreement shall not result in the termination of the franchise agreement. If this Agreement is terminated, the Municipality shall become responsible for the administration and enforcement of the franchise agreement within its corporate limits and shall be entitled to collect and retain the franchise fee and PEG Capital Grant on all revenues derived from subscribers within the Municipality.

9. The County agrees to indemnify, defend, and hold the Municipality harmless from the County's actions in connection with the County's award of the franchise, and the County's administration and enforcement of Chapter 8A of the County Code, and the franchise

agreement. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings, Section 5-301, *et seq.* Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties. The County shall neither be responsible, nor required to indemnify the Municipality, for the negligence, misconduct or inaction of third parties or the Municipality, its employees, or agents regarding any matter covered by this Agreement.

10. This Agreement supersedes and replaces all prior agreements between the Parties related to the enforcement of the Ordinance and the implementation of the Verizon franchise.

IN WITNESS WHEREOF, the County and the Municipality have executed this Agreement as of the day and year first written above.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

By: _____

Isiah Leggett
County Executive

Date: _____

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

BY _____

DATE: _____

WITNESS:

CITY OF TAKOMA PARK, MARYLAND

By _____
Suzanne R. Ludlow
City Manager

Date: _____

Introduced by:

**CITY OF TAKOMA PARK, MARYLAND
RESOLUTION #2016-XX**

**AUTHORIZING APPROVAL OF AN AGREEMENT WITH MONTGOMERY COUNTY
CONCERNING THE COMCAST CABLE FRANCHISE**

WHEREAS, pursuant to §5-204(d) of the Local Government Article, Annotated Code of Maryland, the City may grant a franchise for a cable television system; and

WHEREAS, Comcast of Potomac, LLC applied for a the renewal of a non-exclusive franchise for the operation of a cable communications system within the corporate limits of the City of Takoma Park, Maryland, (“the City”); and

WHEREAS, the City, in conjunction with Montgomery County, Maryland, conducted a public hearing on the proposed franchise on August 3, 2015; and

WHEREAS, Montgomery County, Maryland has granted a franchise for the operation of a cable communications system within the unincorporated portions of Montgomery County upon the terms and conditions set forth in a certain Cable Franchise Agreement by and between Montgomery County, Maryland and Comcast of Potomac, LLC, approved by the Montgomery County Council on February 9, 2016 (the “Franchise Agreement”) and effective on April 1, 2016; and

WHEREAS, based upon the application and supporting materials supplied by Comcast of Potomac, LLC, and the record of the hearing, the Council of the City found that the proposed franchise serves the best interests of the City and its residents, provided that the franchise is granted upon the terms and conditions set out in the Franchise Agreement; and

WHEREAS, the City finds that it is in the best interest of its residents that the awarding or renewing a cable communications franchise and administration and regulation of the Comcast cable system, within the boundaries of the City, to include without limitation awarding or renewing a cable communications franchise, be undertaken by the County and to this end has enacted Section 6-601 of the City Code, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the City; and

WHEREAS, by the attached Agreement to Implement the Comcast Cable Franchise Between Montgomery County, Maryland and the City of Takoma Park, Maryland,, the City and the County have set forth the terms and conditions upon which the County will administer and enforce the Municipality’s Cable Communications Ordinance, if any, and implement Chapter 8A and the Comcast cable franchise; and

WHEREAS, the Council understands that the County Executive recognizes that negotiation of franchise agreements is part of the administration service for which Takoma Park and other municipalities pay 30% of the franchise fees pursuant to this Agreement and expects that this function will continue for the duration of this Agreement; and

WHEREAS, the County has agreed to reimburse to the City for its legal fees incurred in conjunction with the negotiation of the Franchise Agreement and the attached Agreement, up to \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Takoma Park, Maryland, that the City Manager is authorized to sign the Agreement to Implement the Comcast Cable Franchise Between Montgomery County, Maryland and the City of Takoma Park, Maryland in substantially the form attached, provided however that the County concurrently agrees to reimburse the City for up to \$5,000.000 of legal fees incurred in conjunction with the negotiation of the Franchise Agreement and this Agreement.

ADOPTED this _____th day of May, 2016.

AYE:

NAY:

ABSTAIN:

ABSENT:

**AGREEMENT TO IMPLEMENT THE COMCAST CABLE FRANCHISE BETWEEN
MONTGOMERY COUNTY, MARYLAND**

and

THE CITY OF TAKOMA PARK, MARYLAND

THIS AGREEMENT is entered into as of the ____ day of _____, 2016, by and between Montgomery County, Maryland, a body corporate and politic (hereinafter referred to as the “County”), and the City of Takoma Park, Maryland, a municipal corporation organized pursuant to Article XI-E of the Maryland Constitution (hereinafter referred to as “the Municipality”) (collectively referred to as “the Parties”).

WITNESSETH:

WHEREAS, the County enacted Chapter 8A of the Montgomery County Code (2014), as amended, entitled “Cable Communications,” which allows for the grant of one or more franchises for the construction and operation of a cable communications system in the County, and for the administration and regulation of the cable communications system by the County during the franchise term; and

WHEREAS, the County awarded a cable franchise to Comcast of Potomac, LLC (hereinafter referred to as “Comcast”) and approved Comcast’s cable franchise agreement, pursuant to the provisions of Chapter 8A; and

WHEREAS, the Municipality has the express authority to grant one or more exclusive or nonexclusive franchises for a cable television system within its corporate boundaries, pursuant to Section 1-708 of the Local Government Article; and

WHEREAS, the Municipality finds that it is in the best interest of its residents for cable systems to be constructed and operated within its corporate limits; and

WHEREAS, the Municipality finds that it is in the best interest of its residents that the awarding or renewing a cable communications franchise and administration and regulation of the Comcast cable system, within the boundaries of the Municipality, be undertaken by the County and to this end has either (i) enacted an Ordinance, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the Municipality, or (ii) not exempted itself by ordinance from Chapter 8A and therefore Chapter 8A applies in the Municipality pursuant to Section 4-111 of the Local Government Article; and

WHEREAS, the Municipality's Cable Communications Ordinance, if any, provides that the County is requested and authorized to administer and enforce said Ordinance within the Municipality; and

WHEREAS, by this Agreement, the Parties have set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance, if any, and implement Chapter 8A and the Comcast cable franchise.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and the Municipality agree as follows:

1. The Municipality requests that the County administer and enforce Chapter 8A within the corporate limits of the Municipality, and authorizes the County to act as the agent of the Municipality in connection with the negotiation, administration and enforcement of the approved cable franchise agreement to be effective within the corporate limits of the

Municipality. The County agrees to administer the franchise within the Municipality's corporate boundaries as an agent of the Municipality.

2. To the extent permitted by law and by the franchise agreement, the following obligations shall be enforced by the County and enforceable by the Municipality:

(a) The cable communications system shall be constructed to serve the entire Municipality.

(b) The Municipality shall not be discriminated against in the array of channels and services offered by the franchisee, or in the rates charged to customers in the Municipality. This provision applies only insofar as the County is authorized to regulate the franchisee's channels, services, and rates.

(c) The following minimum access channel capacity shall be available for programming by the Municipality and the other Participating Municipalities on the lowest-cost tier of service provided by the franchisee:

(i) Rockville and Takoma Park shall each have one digital access channel, pursuant to Section 6.1.1 of the franchise agreement.

(ii) The other Participating Municipalities in Montgomery County shall share one common digital access channel, pursuant to Section 6.1.1 of the franchise agreement.

(d) If the franchisee changes the channel designations for any municipal channel, the County will divide the cost reimbursement provided for in Section 6.1.2.2 of the franchise agreement equally among the affected Participating Municipalities without any withholding by the County for administration or other reasons.

(e) All waivers and indemnifications obtained by the County from the franchisee shall inure to the benefit of the Municipality.

3. In addition to the digital channels, Section 6.7.5 of the franchise agreement requires Comcast to provide the County with four (4) high definition (“HD”) channels. The Municipality and the other Participating Municipalities, including Rockville, will be permitted to program, and will share, one of the HD channels.

4. Franchise fees shall be distributed to the Municipality in accordance with Section 8A-29 of the Montgomery County Code. If Section 8A-29 is amended to allow the County to retain more than thirty (30) percent of the Municipality’s franchise fees as compensation for the administration of the franchise within the Municipality, the Municipality may terminate this agreement upon thirty (30) days written notice to the County. The distribution shall be made within thirty (30) days after receipt by the County of the franchise fees from the franchisee.

5. Upon the terms and conditions set forth in Section 6.2 of the franchise agreement and the settlement agreement attached as Exhibit D to the franchise agreement, the County shall distribute one ninth (1/9th) of the 3% PEG Capital Grant (“grant”) from the franchisee to Takoma Park and one ninth (1/9th) of the grant to the Montgomery County Chapter of the Maryland Municipal League, or its successor in interest, in a manner directed by the Montgomery County Chapter of the Maryland Municipal League. Pursuant to the settlement agreement, the funds distributed by the County pursuant to this paragraph are not restricted to capital use only, and are eligible and may be used for operating and/or capital cable, PEG and Institutional Network related expenditures. The distribution of each installment shall be made by the County within thirty (30) days after the County receives the grant from Comcast. The

County's obligation to distribute the funds as described above shall not be extinguished as to the signatory of this Agreement if any of the other Participating Municipalities terminates this Agreement in accordance with its terms. Any portion of the capital grant that is not distributed by the County will be retained by the County for its use.

6. Because the franchisee's failure to comply with the provisions of the franchise agreement will result in injury to the Municipality, the extent of which will be difficult to determine, and because the franchise agreement provides for liquidated damages for certain breaches of the franchise agreement, the County will collect, on behalf of the affected Participating Municipality, liquidated damages in accordance with Section 13.6 of the franchise agreement and shall distribute the Municipality's proportionate share to the Municipality as permitted by law, Council appropriation, and the franchise agreement. The foregoing shall apply to liquidated damages payable pursuant to Section 13.6 if the breach directly harms the Municipality.

7. With the exception of paragraph 9, this Agreement shall expire and be of no further force and effect upon revocation of the franchise by the County or the Municipality, or expiration of the franchise effective within the Municipality, subject to any extension of, or continued performance under, the said franchise; provided, however, that either party shall continue to have the right to assert any claims with respect to any obligation or arising out of any breach of this Agreement occurring prior to the revocation or expiration hereof. The franchise within the Municipality shall not be renewed or extended by the County without the approval of the Municipality.

8. In the event of a material breach of this Agreement by either party, the party not in default shall give the defaulting party notice of such breach and an opportunity to cure the

same for a period of thirty (30) days following the giving of such notice. If the defaulting party does not cure the material breach within thirty (30) days of the date of such notice, this Agreement may be terminated by the non-defaulting party upon ten (10) days' written notice to the party committing a material breach hereof. Any notice pursuant to this paragraph of the Agreement shall be hand delivered, with receipt acknowledged, or mailed by certified mail, restricted delivery, addressed in the case of the County, to: Isiah Leggett, County Executive (or successor), Executive Office Building, 101 Monroe Street, Maryland 20850, in the case of the Municipality, to: City Manager, City of Takoma Park, Maryland, 7500 Maple Avenue, Takoma Park, MD 20912. Termination of this Agreement shall not result in the termination of the franchise agreement. If this Agreement is terminated, the Municipality shall become responsible for the administration and enforcement of the franchise agreement within its corporate limits and shall be entitled to collect and retain the franchise fee and PEG Capital Grant on all revenues derived from subscribers within the Municipality.

9. The County agrees to indemnify, defend, and hold the Municipality harmless from the County's actions in connection with the County's award of the franchise, and the County's administration and enforcement of Chapter 8A of the County Code, and the franchise agreement. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts and Judicial Proceedings, Section 5-301, *et seq.* Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties. The County shall neither be responsible, nor required to indemnify the Municipality, for the negligence, misconduct or inaction of third

parties or the Municipality, its employees, or agents regarding any matter covered by this Agreement.

10. The Parties agree that the Participating Municipalities are authorized to connect to the Institutional Network as defined in the Comcast franchise agreement, including Exhibit D, under reasonable terms and conditions for security and network management.

11. This Agreement supersedes and replaces all prior agreements between the Parties related to the enforcement of the Ordinance and the implementation of the Comcast franchise.

IN WITNESS WHEREOF, the County and the Municipality have executed this Agreement as of the day and year first written above.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

By: _____

Isiah Leggett
County Executive

Date: _____

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

BY _____

DATE: _____

WITNESS:

CITY OF TAKOMA PARK, MARYLAND

By: _____

Suzanne R. Ludlow
City Manager

Date: _____