



# AGENDA ITEM

Item Number:

8

TO: CITY COUNCIL

FROM: CITY MANAGER

Submitted By:

Laurie A. Murray  
Administrative Services Manager

**Meeting Date:**

December 4, 2012

**Subject:** Council Member Request: Elimination of Civic Center and Central Park Wi-Fi Service

**RECOMMENDATION:**

It is recommended that the City Council consider Council Member Goedhart's request to discuss eliminating Civic Center and Central Park Wi-Fi service.

**BACKGROUND:**

In January 2012 the City Council, as part of its annual goal setting, established a goal to provide public Wi-Fi services at Central Park and the Civic Center. The City Council then directed staff to begin a citywide technology upgrade by expanding the public Wi-Fi services at those locations. In June 2012, the City Council approved \$10,000 for one-time equipment purchases and \$5,000 for ongoing costs of providing public Wi-Fi.

As staff proceeded with that and other scheduled major technology upgrades, efficiencies were identified by incorporating the funds for the Wi-Fi project with a project to install enhanced internet to City facilities and the installation of a dedicated fiber optics connection between City Hall and the City Yard. At that time, it was discovered that the fiber optics connection with the City Yard would require trenching in the Moody Street and Malaga Drive area where a residential pavement rehabilitation project was scheduled to begin. In order to get the trenching done prior to the pavement project, on July 3, 2012, the City Council considered and approved a five year agreement with Time Warner for the installation of the fiber optic connection and an enhanced dedicated fiber optic internet connection for City facilities. If the contract were cancelled, the City would be required to pay the balance owed for the full five years of service.

This connection, which is scheduled to be completed this month, will allow the City to continue providing Wi-Fi to the public at the Civic Center and with the installation of approximately \$2,500 in equipment and \$200 in ongoing costs, begin providing Wi-Fi to the public at Central Park, thus meeting one of City Council's goals for 2012

By combining the technology projects, the City saved \$6,500 appropriated for one-time costs and \$1,800 in ongoing costs provided for in the Fiscal Year 2012-13 Budget for the Wi-Fi project while providing efficiencies to Civic Center operations.

**FISCAL IMPACT:**

The City has already realized savings of approximately \$8,300 related to the Wi-Fi project by combining it with other technology improvements. Should the City Council decide to not move forward with providing Wi-Fi at Central Park, the City would realize additional one-time savings of up to \$3,300 and ongoing costs of \$200.

**ATTACHMENTS:**

1. Council Member Request Form
2. June 27, 2012, Staff Report with Time Warner Agreement Attached
3. July 3, 2012, Staff Report



# City Council Member Request

From: GERALD GOEDHANT

Date: Nov. 21, 2012

Agenda Item Requested?      Yes     No

Staff Research Requested?    Yes     No

### Request

(Please describe the request and its purpose, context, or other information that may be helpful.):

ELIMINATION OF CIVIC CENTER AND CENTRAL PARK WI-FI SERVICE.  
THE 2012-13 BUDGET INCLUDES \$11,500 FOR CIVIC CENTER AND  
CENTRAL PARK WI-FI SERVICE. THE COST INVOLVES \$6500 FOR  
ONE-TIME COSTS AND \$5000 PER YEAR FOR PROVIDING THE SERVICE.  
IN LIGHT OF THE CITY'S PENDING LOSS OF REVENUE, I RECOMMEND  
THAT THIS PROJECT BE ELIMINATED.

Desired Timeline for Completion: FOR AGENDA OF DEC. 4

- Within one week       Within two weeks       Within one month
- Within two months     Within three months     Within six months

Other/Specific date \_\_\_\_\_

Level of Priority (in relationship to established goals and priorities):

- Request is related to or expands upon existing goals

Which one? \_\_\_\_\_

- Request is new, not related to existing goals




# AGENDA ITEM

Item Number:

**Attachment 2**

**TO: CITY COUNCIL**  
**FROM: CITY MANAGER**

**Submitted By:**   
Laurie A. Murray  
Administrative Services Manager

**Meeting Date:**  
June 27, 2012

**Subject:** Agreement with Time Warner Cable for Enhanced Internet Services and Fiber Cable Connectivity between City Hall and the City Yard

## RECOMMENDATION:

It is recommended that the City Council approve and authorize the Mayor to execute a five-year Agreement with Time Warner Cable for enhanced internet services and fiber cable connectivity between City Hall and the City Yard.

## SUMMARY:

There are several technology related projects planned for Fiscal Year 2012-13, including: new virtual servers, a Voice Over Internet Protocol (VOIP) telephone system, automated meter infrastructure (AMI), a SCADA water system overhaul, public Wi-Fi services, and the replacement of 50% of the City's desktop computers. All of these technology improvements require modern and fast communications over a robust network infrastructure.

Fortunately, the City's network backbone already includes high speed fiber cable connections between City Hall and the two other Civic Center buildings (Recreation and Police). However, the network connection between City Hall and the Public Works City Yard facility that is used for telephone and network services is aging, antiquated, and operating at insufficient speeds. Further, the existing SCADA water system uses 56K modems as its primary communication equipment. Therefore, in anticipation of the various water system improvements and the overall need for improved connectivity with the Yard facility, options were considered to replace the outdated connection. These options considered by staff included installation of City-owned fiber cable, contracting for digital T-1 telephone services, or contracting for fiber cable services. The fiber cable services offered by Time Warner Cable presented the most economical and advantageous option.

Time Warner has proposed that a direct fiber connection from City Hall to the City Yard facility be established using their existing fiber network infrastructure. With the installation of Time Warner fiber cable into the City Hall building, they further recommended that the City's internet access be upgraded from the current connection, which is shared with neighboring businesses

and homes, to a dedicated exclusive high-speed connection. Time Warner has recently completed construction site surveys, which indicate that significant infrastructure improvements will be needed for this project. If approved, the project will require Time Warner to trench along Malaga from Moody to the Yard facility and to bore under the sidewalk along Walker from the medical building to City Hall. Due to the existing scheduled paving projects planned for the Moody and Malaga area, it is imperative that these infrastructure improvements be completed as quickly as possible so that the paving projects can be completed on schedule.

Once the project is completed by Time Warner Cable, the City will have a robust high-speed network backbone that connects all of the City's primary facilities. These improvements are critical for the successful implementation of the AMI project, VOIP phone system, and SCADA upgrades. Further, the enhanced internet services will allow staff to be more efficient, reduce over-time from large agenda postings, and expedite the completion of the planned Wi-Fi in the Park project.

**FISCAL IMPACT:**

The City currently pays Time Warner Cable \$3361 a month for the shared internet connection, including the \$35 per month for IP addresses; the shared internet connection will be discontinued with this upgrade project. Staff negotiated with Time Warner to pay \$12,000 towards the construction costs in exchange for lower monthly costs for the next five years. In addition to the one-time cost of \$12,000, the on-going monthly costs are as follows:

|   |          |
|---|----------|
| City Hall to City Yard Dedicated Fiber Cable (Water Fund) | \$650    |
| Enhanced Dedicated Internet Service (Technology Fund)     | \$565    |
| Static IP Addresses (Technology Fund)                     | \$35     |
| Monthly Total:  | \$1,250  |
| Annual Total  | \$15,000 |

The total cost of the five year agreement is \$87,000.

Sufficient funding does exist within the approved FY 2012-13 Water Enterprise Fund budget to pay for the \$12,000 one-time construction cost. Sufficient funding also exists within the FY 2012-13 Technology and Water Fund budgets to pay their respective portion of ongoing monthly costs. These ongoing annual amounts will be programmed into future budgets as well (FY 2013-14 and beyond).

**Attachment:**

1. Time Warner Agreement



**Business Class Customer Service Order**

Account Executive: Olivia Ortiz  
 Phone: (562) 677-0406 ext:  
 Cell Phone:  
 Fax:  
 Email: olivia.ortiz@twcable.com

|                                  |                                 |   |
|----------------------------------|---------------------------------|---|
| <b>Business Name</b>             | CITY OF LA PALMA<br>CITY HALL   | <b>Customer Type:</b>                   |
| <b>Federal Tax ID</b>            | <b>Tax Exempt Status</b>        | <b>Tax Exempt Certificate #</b>         |
| *****5575                        |                                 |   |
| <b>Billing Address</b>           | <b>Account Number</b>           |   |
| 7822 WALKER ST LA PALMA CA 90623 | 8448400930025163                |   |
| <b>Billing Contact</b>           | <b>Billing Contact Phone</b>    | <b>Billing Contact Email Address</b>    |
| Chet Corbin                      | 7146903334                      | chetc@cityoflapalma.org                 |
| <b>Authorized Contact</b>        | <b>Authorized Contact Phone</b> | <b>Authorized Contact Email Address</b> |
| Laurie Murray                    | (714) 690-3338                  | lauriem@cityoflapalma.org               |
| <b>Technical Contact</b>         | <b>Technical Contact Phone</b>  | <b>Technical Contact Email Address</b>  |
| Chet Corbin                      | 7146903334                      | chetc@cityoflapalma.org                 |

|  |                                    |
|--|------------------------------------|
| <b>Internet and Video Order Information For</b> 7822 Walker St La Palma CA 90623 |                                    |
| <b>Service Type</b>  | <b>Customer Requested Due Date</b> |
| IPs (Internet Addresses)   |                                    |

|   |                                   |                      |                  |                                    |
|---|-----------------------------------|----------------------|------------------|------------------------------------|
| <b>Dedicated Internet, Metro Ethernet, and Private Line Service Order Information For</b> |                                   |                      |                  |                                    |
| <b>Site Name</b>  | <b>Address Location</b>           | <b>Location Type</b> | <b>Bandwidth</b> | <b>Customer Requested Due Date</b> |
| City Hall to Maint Yard   | 7822 Walker St La Palma, CA 90623 |                      | 10 M             |                                    |
| City Hall Hub   | 7822 Walker St La Palma, CA 90623 |                      | 10 M             | 9/15/2012                          |

**Monthly Recurring Charge At** 7822 Walker St , La Palma CA 90623

| Description                  | Quantity | Sales Price | Monthly Recurring Total | Contract Term |
|------------------------------|----------|-------------|-------------------------|---------------|
| BCF Fiber I-Net              | 1        | \$565.00    | \$565.00                | 60 Months     |
| BCF Fiber Metro E Intrastate | 1        | \$650.00    | \$650.00                | 60 Months     |
| 13 Static IP                 | 1        | \$35.00     | \$35.00                 | 60 Months     |
| <b>*Total</b>                |          |             | <b>\$1,250.00</b>       |               |

\*Prices do not include taxes and fees.

**One Time Charge At** 7822 Walker St , La Palma CA 90623

| Description       | Quantity | Sales Price | Total              |
|-------------------|----------|-------------|--------------------|
| BCF Fiber Install | 1        | \$6,000.00  | \$6,000.00         |
| BCF Fiber Install | 1        | \$6,000.00  | \$6,000.00         |
| <b>Total</b>      |          |             | <b>\$12,000.00</b> |

\*Prices do not include taxes and fees.

**Special Terms**

The services, products, prices and terms identified on this Service Order constitute Time Warner Cable's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate below, Time Warner Cable reserves the right to rescind this offer at any time, at its sole discretion.

The Agreement shall be renewable for successive terms unless at least thirty (30) days prior to the expiration of the then-current term, either party notifies the other party of such party's intent not to renew this Agreement. Agreement term and corresponding monthly billing will commence on actual service installation date. Cable television and Work-at-home services are subject to annual price change.

Prices will remain the same or lower based on the industry rates and term/length of the contract. Customer may cancel service within 90 days.

Service : 10 M DIA at City Hall 7822 Walker St. / 13 Static IP's (use existing Static IP's) , 5 M Metro Ethernet Point to Point from 7822 Walker St. to 8415 Meadowlark Ave. La Palma

**Electronic Signature Disclosure**

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

\_\_\_\_\_  
Authorized Signature for Time Warner Cable

\_\_\_\_\_  
Authorized Signature for Customer

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed





## Service Agreement

This Time Warner Cable Business Class Service Agreement ("**Service Agreement**") in addition to the Time Warner Cable Business Class Terms and Conditions ("**Terms and Conditions**") and any Time Warner Cable Business Class Service Orders (each, a "**Service Order**"), constitute the **Master Agreement** by and between customer identified below ("**Customer**") and Time Warner Cable ("**TWC**" or "**Operator**") and is effective as of the date last signed below.

### Time Warner Cable Information

|           |            |
|-----------|------------|
| Street:   | Contact:   |
| City:     | Telephone: |
| State:    | Facsimile: |
| Zip Code: |            |

### Customer Information

|                                   |        |       |                |           |
|-----------------------------------|--------|-------|----------------|-----------|
| Customer Name (Exact Legal Name): |        |       | Federal ID No: |           |
| Billing Address:                  | Suite: | City: | State:         | Zip Code: |
| Billing Contact Name:             | Phone: |       | E-mail:        |           |
| Authorized Contact Name:          | Phone: |       | E-mail:        |           |

### Agreement

THIS SERVICE AGREEMENT HEREBY INCORPORATES BY REFERENCE THE TERMS AND CONDITIONS (AVAILABLE AT [WWW.TWCBC.COM/LEGAL](http://WWW.TWCBC.COM/LEGAL)), A COPY OF WHICH WILL BE PROVIDED TO CUSTOMER UPON REQUEST. BY EXECUTING THIS SERVICE AGREEMENT BELOW, CUSTOMER ACKNOWLEDGES THAT: (1) CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS, INCLUDING SECTION 21 THEREOF, WHICH PROVIDES THAT THE PARTIES DESIRE TO RESOLVE DISPUTES RELATING TO THE TIME WARNER CABLE BUSINESS CLASS SERVICES AGREEMENT THROUGH ARBITRATION; AND (2) BY AGREEING TO ARBITRATION, CUSTOMER IS GIVING UP VARIOUS RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY.

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

#### Electronic Signature Disclosure

| Authorized Signature for Time Warner Cable Inc. | Authorized Signature for Customer |
|---|-----------------------------------|
| By:   | By:                               |
| Name (printed):                                 | Name (printed):                   |
| Title:  | Title:                            |
| Date:   | Date:                             |

# Time Warner Cable Business Class Ethernet and Dedicated Internet Access Service Level Agreement

This document outlines the Service Level Agreement (“SLA”) for the Ethernet and Dedicated Internet Access fiber based Services (each, a “Service”). All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

## I. SLA Targets:

| Service   | Availability                              | MTRR  | Latency              | Packet Loss | Jitter |
|---|---|---|----------------------|-------------|--------|
| DIA / Ethernet<br>(Metro and Regional Services) | End to End:<br>99.97%<br>(On-Net Circuit) | Restore: Priority 1<br>Outage within 4<br>hours | 50ms<br>(Round Trip) | <0.1%       | N/A    |

## II. Priority Classification:

TWC will classify Service Disruptions (as defined below) as follows:

| Priority   | Criteria   |
|------------|--|
| Priority 1 | <ul style="list-style-type: none"> <li>a. Total loss of Service (“Priority 1 Outage”)</li> <li>b. Service degradation to the point where Customer is unable to use the Service and is prepared to release it for immediate testing.</li> </ul> |
| Priority 2 | Degraded Service where Customer is able to use the Service and is not prepared to release it for immediate testing.  |
| Priority 3 | <ul style="list-style-type: none"> <li>a. A service problem that does not impact the Service.</li> <li>b. A single non-circuit specific quality of Service inquiry.</li> </ul>   |

\* Customer must open a trouble ticket with TWC to report a Service Disruption and establish the beginning of such Service Disruption.

### III. Network Availability

A “Service Disruption” is defined as a disruption or degradation that interferes with the ability of a TWC network hub to (i) transmit and receive network traffic on a Customer’s dedicated access port; and (ii) exchange network traffic with another TWC network hub. Service Disruptions include Priority 1 Outages. Service Disruptions exclude planned outages, routine maintenance, service problems resulting from acts or omissions of Customer, Customer equipment failures, and a Force Majeure Event.

“Network Availability” is calculated as the total number of minutes the circuit is up (other than a Priority 1 outage) in a calendar month for a specific Customer connection, divided by the total number of minutes in a calendar month.

#### Commitment:

TWC’s monthly Network Availability Target is 99.97%.

The following table contains examples of the percentage of Network Availability translated into minutes of up time and downtime for the 99.97% Network Availability target:

| Percentage by Days Per Month | Total Minutes / Month | Minutes Up | Minutes Down |
|------------------------------|-----------------------|------------|--------------|
| 99.97% for 31 Days           | 44,640                | 44,626     | 14           |
| 99.97% for 30 Days           | 43,200                | 43,187     | 13           |
| 99.97% for 29 Days           | 41,760                | 41,747     | 13           |
| 99.97% for 28 Days           | 40,320                | 40,307     | 13           |

### IV. Latency

Latency is the average roundtrip network delay, measured every 5 minutes, to adequately determine a consistent average monthly performance level for latency at the relevant TWC Hub/POP. The Roundtrip Delay is expressed in milliseconds (ms). The observation period is one calendar month. For DIA, TWC measures latency using a standard 64byte ping from Customer premise device to the TWC Internet access router in a round trip fashion. For Ethernet, TWC measures latency using a standard 64byte ping from Customer premise device between site A and site Z.

Latency is calculated as follows:

$$\text{Latency} = \text{Sum} \frac{\text{Roundtrip Delay for relevant Hub-Hub connections}}{\text{Total \# of relevant Hub-Hub connections}}$$

## V. Packet Loss

Packet Loss is defined as the average number of packets that are not successfully received. Packet Loss is the average ratio of total packets that are sent compared to those that are received. Ratios are based on packets that are transmitted from a network origination point and received at a network destination point (network edge to network edge).

Packet Loss is calculated as follows:

$$\text{Packet Loss (\%)} = 100 (\%) - \text{Packet Delivery (\%)}$$

## VI. Mean Time To Restore (“MTTR”)

The Mean Time To Restore (“MTTR”) measurement for a Service is the cumulative length of time it takes to restore service for Priority 1 Outage for a specific connection in a calendar month divided by the corresponding number of trouble tickets for Priority 1 Outages opened during the calendar month for that connection.

MTTR per calendar month is calculated for as follows:

Cumulative length of response time to Priority 1 Outage(s) per connection

Total number of Priority 1 Outage trouble tickets per connection

## VII. Network Maintenance

### Maintenance Notice:

Customer understands that from time to time TWC will perform routine network maintenance for network improvements and preventive maintenance, and in some cases, TWC will have to perform urgent network maintenance, which will usually also be conducted within the routine maintenance windows. TWC will use reasonable efforts to provide advance notice of the approximate time, duration and reason for the routine maintenance and if commercially practicable, will provide notice of urgent maintenance. In no event shall any routine or urgent network maintenance be calculated against the foregoing outage measurements.

### Maintenance Windows:

Routine maintenance is typically performed during the following maintenance windows:

Monday – Friday 12 a.m. – 6 a.m. Local Time

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You first. The technology follows.™

## **Time Warner Cable Business Class Services Agreement Terms and Conditions**

### **1.0 AGREEMENT.**

The Time Warner Cable Business Class Services Agreement executed by the parties and these Terms and Conditions, including all documents incorporated herein by reference (collectively referred to as the “Agreement”) set forth the entire agreement between the Customer and TWC and together with Customer, (the “Parties” or each individually a “Party”) for the delivery and use of and payment for the services (“Services”) identified on an Order(s) (as defined in Section 2.2 below) and further described on the applicable attachments to this Agreement (including Attachment A (National Teleworker Service and Branch Office Connectivity Service), Attachment B (Cable TV Service), Attachment C (Business Class Phone Service), Attachment D (Metro Ethernet Solutions/Dedicated Access Service)).

### **2.0 SERVICES AND ORDERS.**

2.1 Subject to the terms and conditions of this Agreement (including, without limitation, Customer’s compliance with its obligations set forth in Section 5), TWC shall provide Customer with the Services, pursuant to and in conformance with any Order accepted in accordance with Section 2.2 below during the Term (as defined in Section 6 below). Customer understands and agrees that certain Services may not be available in all TWC service areas and that TWC, upon entering into an Order with Customer may, at its own discretion, utilize one or more of its affiliates or another party or parties to deliver the applicable Service. Unless otherwise set forth on an applicable Attachment, TWC shall use commercially reasonable efforts to provide each Service identified in an Order seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond TWC’s reasonable control.

2.2 Customer shall request Services hereunder by issuing to TWC one or more proposed service and/or work order(s) (each an “Order”) pursuant to this Agreement (in the form provided or approved by TWC) or via a mutually agreed electronic order entry system. Upon TWC’s acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed an “Order” hereunder and shall be deemed incorporated into this Agreement. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) TWC’s acceptance of such proposed service and/or work order in writing; or (b) TWC’s commencement of delivery of the Service(s) set forth in such proposed service and/or work order. As of the date an Order is agreed to by Customer, Customer is deemed to have ordered the Services and approved of TWC’s initiation of the installation and construction process. Customer’s termination rights thereafter shall be as set forth in Section 11 below, provided that if a site survey has not been completed by TWC as of the date of an Order and the site survey, once completed, reveals that the construction costs will require an increase in the non-recurring or recurring fees set forth on an Order, either Party (TWC or the Customer) may cancel the Order, without obligation.

### **3.0 SERVICE & EQUIPMENT INSTALLATION.**

Customer shall obtain and maintain, or ensure that each Customer employee or branch office to whom the Service will be provided, or who shall use the Service, as applicable (each an "End User"), shall obtain and maintain, throughout the Term such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Service and TWC Equipment (as defined in Section 4 below) as contemplated herein at Customer's and any Customer End User's facilities. Customer shall permit TWC reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the TWC Equipment and other Service components collocated at Customer's or an End User's facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any TWC Equipment as specified by TWC and that is required to provide the Services hereunder. In addition, Customer will provide TWC with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of TWC Equipment at the Customer locations identified in an Order, for the term of the applicable Order. Customer shall not charge TWC, and shall ensure that TWC does not incur, any fees or expenses whatsoever in connection with Customer's provision of space, power, or access as described herein, or otherwise in connection with Customer's performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on an Order. TWC shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of a Service. In the event that TWC is unable to install the Service in accordance with the agreed upon schedule as a result of (i) Customer's (or its End User's) failure to deliver any required materials, support or information to TWC; or (ii) TWC not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay TWC the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by TWC and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Interconnection of the Service and TWC Equipment with Customer's or an End User's, as applicable, equipment will be performed by Customer unless otherwise agreed in writing between the Parties. With respect to any Services for which Customer will seek any discounts under the E-Rate Program administered by the Schools and Libraries Division of the Universal Administrative Company (USAC) or the California Teleconnect Fund ("E-Rate Discounts"), Customer acknowledges that TWC will not begin installation of any Equipment or otherwise incur costs to provide such Services under this Agreement unless and until Customer notifies TWC that either (i) Customer has received confirmation of applicable E-Rate Discounts or (ii) Customer elects to pay the Gross Monthly Service Charges set forth on the Order in full.

#### **4.0 SUPPORT & MAINTENANCE.**

TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers or other items, (collectively, the "TWC Equipment") on TWC's side of the demarcation points used by TWC to provide the Service. Notwithstanding any contrary provision set forth in this Agreement, equipment and services on Customer's side of the demarcation points, as well as any other

Customer-provided equipment, are the responsibility of Customer. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by TWC and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC under this Agreement or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, TWC shall use commercially reasonable efforts to restore any cable cuts on the TWC network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for TWC Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by TWC.

## **5.0 CUSTOMER OBLIGATIONS.**

5.1 Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement. Customer agrees not to resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by TWC. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and any applicable Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all applicable Service policies, including without limitation acceptable use policies, terms in the Attachments to this Agreement, and other terms and conditions established by TWC and available on the TWC web site, [www.twcbc.com/legal](http://www.twcbc.com/legal), as may be modified from time to time by TWC, at its sole discretion. TWC may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with this Agreement.

5.2 Customer shall ensure that all TWC Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances and Customer shall be responsible for loss or damage to the TWC Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service by Customer, an End User or any unauthorized person or entity, which use shall be deemed Customer's use for purposes of this Agreement; (b) all content that is viewed, stored or transmitted via the Service, as applicable; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer agrees to conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by TWC from time to time.

## **6.0 TERM.**

The Agreement shall commence on the date of full execution by the Parties (the "Effective Date") and shall remain in effect for an initial term as set forth on the initial Order (the "Initial Term"). Unless terminated earlier in accordance with the provisions stated herein, upon the expiration of the Initial Term this Agreement shall automatically renew on a month-to-month basis, unless either Party notifies the other Party at least thirty (30) days prior to the expiration of the then-current Term of such Party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term"). If an Order Term (as set forth in an applicable Order)



extends beyond the expiration of the Term, then this Agreement and the respective Order(s) will continue in effect until the expiration or termination of the applicable Order Term, but only as to the applicable Order(s), and subject to the termination rights of TWC and Customer under this Agreement.

## **7.0 PAYMENT.**

For each Service, Customer agrees to pay TWC the non-recurring Service installation fees and monthly recurring Service fees (collectively the "Service Charges") set forth on the applicable Order in accordance with the following payment terms: Service Charges will be billed to Customer on a monthly basis, in accordance with TWC's regular billing schedule, and are payable within thirty (30) days after the date appearing on the invoice. If Customer and any Services purchased under this Agreement are eligible for E-Rate Discounts, as a courtesy to Customer, TWC will submit invoices to Customer net of E-Rate Discounts and bill the balance to the government agencies administering the E-Rate Discounts, all as set forth on the applicable Order. Customer shall provide to TWC satisfactory evidence of the continuation of each E-Rate Discount for each year of the Initial Term. If TWC does not receive such confirmation, then TWC shall have the right to bill the Gross Monthly Service Charges to Customer. TWC shall have the right to increase Service Charges for each Service after the initial Order Term for such Service upon thirty (30) days advance written notice to Customer. TWC may charge a standard late fee for any amounts which are not paid when due, which amount shall not exceed one percent of the monthly Service Charges or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. If TWC fails to present an invoice in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates and Customer shall pay such invoice as required in these payment terms.

## **8.0 TAXES.**

Customer shall pay all federal, state, and local taxes, fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of this Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. TWC shall have the right to recover from Customer the amount of any state or local fees or taxes arising as a result of this Agreement, which are imposed on TWC or TWC's services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under this Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under this Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

8.1 Unless otherwise set forth in an Order, Customer represents and warrants that Customer's use of the Services shall be such that the Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "10% Rule" (47 C.F. R. 36.154, 4 FCC Red. 1352), and shall notify TWC in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of the Service, the Service is deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer will be liable for any resulting fees, fines, penalties and costs incurred by TWC. In addition, if TWC determines that Customer's use of the Service is likely to be deemed not to be jurisdictionally interstate, and therefore that TWC's provision of the Services is likely to put TWC's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for TWC, then TWC may immediately suspend the provision of Services under all affected Service Orders until such time as either (a) Customer provides TWC with satisfactory assurances that Customer's use of the Services shall be deemed to be jurisdictionally interstate or (b) TWC is otherwise brought into full compliance with any applicable laws and regulations.

8.2 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

## **9.0 PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

(a) TWC's Proprietary Rights. All materials including, but not limited to, any TWC Equipment (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer herein are reserved to TWC. Customer shall not open, alter, misuse, tamper with or remove the TWC Equipment as and where installed by TWC, and shall not remove any markings or labels from the TWC Equipment indicating TWC (or its suppliers) ownership or serial numbers. (b) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement, including but not limited to the content of this Agreement, that are identified or marked as confidential or are

otherwise reasonably understood to be confidential. (c) Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

#### **10.0 MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.**

TWC shall have the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of the Terms of Use. TWC will notify Customer of any material adverse change in the Terms of Use or Service descriptions by posting notice of such change on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. In any event, if TWC modifies the Terms of Use and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate without penalty the portion of the Order relating to the affected Service.

#### **11.0 TERMINATION.**

Either Party may terminate an applicable Order (a) upon thirty (30) days written notice of the other Party's material breach, provided that such material breach is not cured within such thirty (30) day period, or (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, is removed or delisted from a trading exchange or its long term debt is downgraded more than two levels from its rating as of the Effective Date. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement or the Terms of Use, TWC may upon thirty (30) days written notice suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, TWC may immediately suspend Customer's or its End User's use of the Service if such use is determined by TWC, at its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. TWC will use commercially reasonable efforts to assist Customer in remedying such degradation. In the event of a suspension, TWC may require the payment of reconnect or other charges before restarting the suspended Service. Upon the termination or expiration of this Agreement or Order(s) hereunder: (i) TWC's obligations hereunder shall cease; (ii) Customer promptly shall pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration and any applicable deinstallation fees identified in Order(s), if any; (iii) Customer promptly shall cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (iv) Customer shall return to TWC or permit TWC to remove, in TWC's discretion, the TWC Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the reasonable and documented costs of the repair or replacement, at TWC's discretion, of any TWC Equipment not returned in accordance with this Section 11. In addition, notwithstanding anything to the contrary herein, upon early termination of an Order by Customer for any reason other than as set forth in Section 11(a) or 11(b) above or by TWC for any reason set forth in Section 11(a) or 11(b) above, Customer shall promptly pay TWC a

termination fee equal to the Gross Monthly Service Charges set forth on the Order that would have been due for the remainder of the Initial Term or the then-current renewal term. The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or at law or equity relating to Customer's material breach.

## **12.0 INDEMNIFICATION.**

Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to (a) the use of the Service, including but not limited to a breach of Section 5 herein; or (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents; (c) any fees, fines or penalties incurred by TWC as set forth in Section 8.1 herein; or (d) breach of the terms governing any use of music service provided as part of the Service.

## **13.0 DISCLAIMER OF WARRANTY.**

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICE, TWC EQUIPMENT AND TWC MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME, EXCEPT AS SET FORTH IN THIS AGREEMENT. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO CUSTOMER'S OR END USER'S SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES

THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

#### **14.0 LIMITATION OF LIABILITY.**

IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.

#### **15.0 DISCLOSURE OF CUSTOMER INFORMATION.**

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "Telecommunications Act"), the Federal Cable Communications Act (the "Cable Act"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by TWC in writing, and, if applicable, in TWC's tariff, which are incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("ARIN") or any similar agency, or in accordance with TWC's Subscriber Privacy Notice or, if applicable, tariff. In addition, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

#### **16.0 FORCE MAJEURE.**

Notwithstanding anything to the contrary contained herein, a Party shall have no liability to the other hereunder due to circumstances beyond its control, including, but not limited to, acts of

God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "Force Majeure Event"). Notwithstanding anything to the contrary herein, Customer may terminate the affected Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than thirty (30) consecutive days and prevents TWC from delivering the Service subject to such Order(s).

#### **17.0 REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.**

In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in universal service fees or other government- or quasi-government-imposed charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under this Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate this Agreement as to any or all of the Service and may terminate any affected Orders, without liability by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

17.1 This Agreement, its Attachments and the Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of this Agreement, its Attachments, or the Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Agreement, its Attachments, and/or the Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Agreement, its Attachments, and the Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.

#### **18.0 ENTIRE AGREEMENT.**

This Agreement, including without limitation all Attachments that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

#### **19.0 ORDER OF PRECEDENCE.**

Each Service shall be provisioned pursuant to the terms and conditions of this Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Attachment or Order are inconsistent with the terms of this Agreement, the terms of this Agreement shall control.

#### **20.0 COMPLIANCE WITH LAWS.**

As between the Parties, TWC will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated herein, and Customer will obtain and maintain at its own expense all license, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in this Agreement, each Party will give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.

#### **21.0 ARBITRATION.**

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THIS AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE

#### **22.0 MISCELLANEOUS.**

This Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that any portion of this Agreement is held to be invalid or unenforceable,

the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any affiliate, as well as by TWC and/or its subcontractors. Customer may not issue a press release, public announcement or other public statements regarding this Agreement without TWC's prior written consent. Excluding any third party claims, claims under this Agreement must be initiated not later than two (2) years after the claim arose, except with respect to claims by Customer relating to Service Charges, which must be initiated not later than six (6) months after the claims arose. There are no third party beneficiaries to this Agreement. The Parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing. The provisions of sections 7, 8, 9, 11, 12, 13, 14, 15, 21 and 22 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.



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**Attachment A**  
**National Teleworker Service and Branch Office Connectivity Service**

**Service Descriptions:**

**National Teleworker Service (“NTW Service”):** If Customer selects to receive the Cable TV Service, TWC shall provide Basic and Standard Cable services. Customer understands and agrees that premium program services, such as HBO, Cinemax, Showtime, and The Movie Channel, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

**Branch Office Connectivity Service (“BOC Service”):** If Customer selects to receive the BOC Service, TWC shall provide connectivity from the number of Customer branch offices set forth in an accepted Order to the Customer’s data network. Subject to Customer’s payment of the Service Charges assessed hereunder, Customer shall be permitted to connect any number of computers within Customer’s identified branch offices to the Service, provided that use does not exceed the standard bandwidth provided by TWC.

**Customer’s use of the NTW Service and/or the BOC Service is subject to the following additional terms and conditions:**

TWC shall allow Customer employees to use (however in no event shall TWC be responsible for) a Virtual Private Network (VPN) and to allow the VPN to pass through the cable modem of any NTW Service or BOC Service, as applicable, provided that TWC shall have the right to disconnect (or demand the immediate disconnection of) any such service that degrades the TWC Service for other subscribers on the TWC network.

Customer shall not upload, post, transmit or otherwise make available on or via the NTW Service or BOC Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer’s bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network.

In the event that any TWC audit reveals that Customer’s usage of the NTW Service or BOC Service exceeds Customer’s rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any

excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition,

TWC shall have the right, but not the obligation, to (i) review content in public areas of the NTW Service or BOC Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of this Agreement, any bandwidth utilization limitations or other Terms of Use.

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## **Attachment B Cable TV Service**

### **Service Description:**

**Cable TV Service:** If Customer selects to receive the Cable TV Service, TWC shall provide Basic and Standard Cable services. Customer understands and agrees that premium program services, such as HBO, Cinemax, Showtime, and The Movie Channel, may not be received or shown on any television receivers located in any public areas, such as lounges, dayrooms, visiting areas or other common areas used by groups or the general public, nor shall Customer authorize or approve of any copying, taping or duplicating thereof.

### **Customer's use of the Cable TV Service is subject to the following additional terms and conditions:**

In the event that changes in technology require the use of specialized equipment to continue to receive Cable TV Services provided by this Agreement, TWC agrees to provide such equipment and Customer agrees to pay for such equipment at the same rate charged by TWC to commercial customers in the municipality in which Customer's property receiving the Cable TV Service is located.

In the event that any TWC audit reveals that Customer's usage of the Cable TV Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

The monthly service charges set forth in an Order for Cable TV Service do not include applicable taxes, regulatory fees, franchise fees and public access fees. Notwithstanding anything to the contrary in this Agreement, the monthly service charges for the Cable TV Service are subject to change in accordance with commercial Cable TV rate increases applied to commercial customers.

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## **Attachment C**

### **Business Class Phone Service**

#### **Service Description:**

**Business Class Phone Service:** If Customer selects to receive the Business Class Phone Service, Customer will receive telephone service consisting of up to twelve lines, including a variety of features, as described more fully in the applicable Order.

#### **Customer's use of the Business Class Phone Service is subject to the following additional terms and conditions:**

- Customer acknowledges that the voice-enabled cable modem used to provide the Business Class Phone Services is electrically powered and that the Business Class Phone Services, including the ability to access 911 services and alarm, security, medical and other monitoring services, may not operate in the event of an electrical power outage or if Customer's TWC broadband connection is disrupted or not operating. Customer also acknowledges that, in the event of a power outage at Customer or any End User's facility, any battery or back-up power supply included with the TWC-provided voice-enabled cable modem may enable back-up service for a limited period of time or not at all, depending on the circumstances, and that inclusion of the battery or back-up power supply does not ensure that Business Class Phone Service will be available in all circumstances. Customer also acknowledges that, in the event of a loss of power that disrupts the local TWC cable system, the battery or back-up power supply included with the TWC-provided voice-enabled cable modem will not provide back-up service and the Business Class Phone Service will not be available.
  
- Customer agrees that TWC will not be responsible for any losses or damages arising as a result of the unavailability of the Business Class Phone Service, including the inability to reach 911 or other emergency services, or the inability to contact a security system or remote medical or other monitoring service provider. Customer acknowledges that TWC does not guarantee that the Business Class Phone Service will operate with alarm, security, medical and/or other monitoring systems and services, and that Customer must contact (at Customer's sole expense) any applicable alarm, security, medical or other monitoring system and service provider in order to test Customer's system's operation with the Business Class Phone Service.
  
- The location and address associated with the Business Class Phone Service will be the address identified on the Order. Customer is not permitted to move TWC Equipment from the location and address in which it has been installed. Furthermore, if Customer moves its voice-enabled cable modem to an address different than that identified on the Order, calls from such modem to 911 will appear to 911 emergency service operators to be coming from the address identified on the Order and not the new address.

- Customer acknowledges that the existing telephone wiring inside Customer's and/or its End User's facility (as applicable) may not support both the Business Class Phone Service and digital subscriber line (DSL) service or other services provided by other service providers. Therefore, Customer intends to obtain service from other providers in addition to Business Class Phone Service, Customer must maintain separate wiring, not provided by TWC, specifically for use with such other services provided by other service providers and must ensure that any existing DSL service or other service is properly disconnected from all wiring to be used for Business Class Phone Service prior to installation of Business Class Phone Service on Customer's existing wiring.
- Customer agrees to provide TWC and its authorized agents with access to Customer's internal telephone wiring at the network interface device or at some other minimum point of entry in order to facilitate the installation and operation of Business Class Phone over existing wiring. Customer hereby authorizes TWC to make any requests from Customer's landlord, building owner and/or building manager, as appropriate and to make any requests necessary to other or prior communications service providers as necessary and appropriate to ensure that TWC has all access to inside wiring and cabling necessary and sufficient to efficiently and securely install Business Class Phone Service and all related equipment.
- In the event that a material error or omission in Customer's directory listing information, regardless of form, is caused by TWC, Customer's sole and exclusive remedy shall be a partial service credit in an amount set by TWC's then-current standard policies or as prescribed by applicable regulatory requirements, if any. Notwithstanding the foregoing, TWC shall have no other liability for any error or omission in any directory listing information.
- Information relating to Customer calling details ("Calling Details"), including the quantity, configuration, type, destination and amount of Business Class Phone Service usage by Customer, and information contained in Customer's bills (collectively, "Customer Proprietary Network Information" or "CPNI"), that is obtained by TWC pursuant to its provision of Business Class Phone Services will be protected by TWC as described herein and in accordance with applicable federal and state requirements. Notwithstanding the foregoing, the following shall not be CPNI: (i) Customer's directory listing information, regardless of whether such directory information is or is not published or intended to be published; and (ii) aggregated and/or compiled information that does not contain customer-specific references, even if CPNI was used as a basis for such information.
- TWC may use CPNI and share CPNI with its partners and contractors: (i) to provide services and bills to Customer; (ii) to respond to governmental requests and subpoenas; (iii) pursuant to applicable law, including the Communications Assistance for Law Enforcement Act ("CALEA") (iv) to protect the interests of TWC, Customer and related parties in preventing fraud, theft of services, abuse, harassment and misuse of telephone services; (v) to protect the security and integrity of TWC's network systems; and (vi) to market additional TWC services to Customer that are of the same category as the services that Customer purchases from TWC. Customer agrees that, except as provided in Section 14.0 of the Agreement and applicable law, TWC will

not be liable for any losses or damages arising as a result of disclosure of CPNI. TWC may use without further consent Customer's CPNI to market to customer additional TWC services that are of the same category as the services that Customer purchases from time to time from TWC. TWC will obtain Customer's consent before using Customer's CPNI to market to Customer TWC services that are not within the categories of services that Customer purchases from TWC.

- Customer may obtain from TWC Calling Details showing Customer's outbound calls made within a trailing 90-day period. Customer may access this information by logging in through Customer's secure account information page on TWC's web portal or by requesting such information in writing or by telephone call to TWC. If Customer has not been assigned a designated account representative, TWC will respond to Customer requests for Customer Calling Details only in compliance with TWC's then-current authentication requirements and applicable law. Such authentication requirements may require Customer to obtain a secure password, which may be required for both online and telephone requests for Calling Details. TWC will provide the requested Calling Details by sending a printout or CD containing the requested information to the Customer's established account address or by making the document or information available to Customer or Customer's employee at a TWC retail location upon presentment of a valid government-issued photo ID and proof of authorization by Customer. TWC will notify Customer of any requests to change account passwords, activate online account access and change Customer's established account address. TWC may provide such notice by voicemail, by e-mail or by regular mail to Customer's prior account address.

- If TWC has assigned a designated account representative to Customer, Customer may identify a person or persons who are authorized to request Calling Details from the designated account representative, with or without further identity authentication, at Customer's option, and may designate the means by which TWC will provide such information to Customer (e.g., electronically, by fax, by mail, orally or otherwise) ("Calling Detail Preauthorization Plan"). Thereafter, TWC will provide requested Calling Detail in accordance with the Calling Detail Preauthorization Plan. Customer is responsible for: (i) ensuring that TWC receives timely notice of any changes to the list of authorized individuals (ii) the accuracy of Customer-defined additional authentication information and practices; (iii) and maintaining the security and confidentiality of the Calling Detail Preauthorization Plan. TWC will not be liable to Customer for any disclosure of Calling Detail, including CPNI, that occurs if TWC has complied with the Calling Detail Preauthorization Plan.

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## **Attachment D**

### **Data Services: High Speed Data/ Metro Ethernet Solutions/Dedicated Internet Access**

#### **Services Description:**

**High Speed Data (“HSD Service”):** If Customer selects to receive the HSD Service; TWC shall provide connectivity from the number of Customer sites set forth in an accepted Order to the Customer’s data network. Subject to Customer’s payment of the Service Charges assessed hereunder, Customer shall be permitted to connect any number of computers within Customer's identified sites to the Service, provided that use does not exceed the standard bandwidth provided by TWC.

**Metro Ethernet Solutions/Dedicated Internet Access:** If Customer selects to receive the metro Ethernet solutions/dedicated access service (“Metro Ethernet Solutions Service”), TWC shall provide Customer with a dedicated circuit connection between Customer’s data network identified on an Order and the TWC facility identified on an Order.

#### **Customer’s use of the Metro Ethernet Solutions Service is subject to the following additional terms and conditions:**

TWC’s provision of the Metro Ethernet Solutions Service is subject to availability. The Metro Ethernet Solutions Service shall be limited to the capacity set forth on an Order, and Customer must purchase any additional capacity separately.

Customer agrees to use the Metro Ethernet Solutions Service solely for transmitting data in IP form. Customer shall not upload, post, transmit or otherwise make available on or via the Metro Ethernet Solutions Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove or demand the removal of, content that in its judgment violates these standards.

TWC shall have the right, but not the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters).

In the event that any TWC audit reveals that Customer's usage of the Metro Ethernet Solutions Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to (i) review content in public areas of the Metro Ethernet Solutions Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any rules now or hereafter

established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of this Agreement, any bandwidth utilization limitations or other Terms of Use.






# AGENDA ITEM

Item Number:

**Attachment 3**

**TO: CITY COUNCIL**  
**FROM: CITY MANAGER**

**Submitted By:**   
Laurie A. Murray  
Administrative Services Manager

**Meeting Date:**  
July 3, 2012

**Subject:** Enhanced Internet Services and Fiber Cable Connectivity between City Hall and the City Yard

## RECOMMENDATION:

It is recommended that the City Council review the provided information regarding the proposed enhanced internet services and fiber cable connectivity project between City Hall and the City Yard, and authorize the Mayor to execute an Agreement for said services.

## BACKGROUND:

At a Special Meeting on June 27, 2012, the City Council considered a request to approve an agreement with Time Warner Cable for enhanced internet and fiber cable connectivity between City Hall and the City Yard. After lengthy discussion, the City Council voted to continue the discussion to the July 3 Special Meeting so that additional information could be provided. This report is being provided to address the City Council's concerns. In an effort to better define the proposed technology upgrade project, it has been divided into two portions: the City Yard connection project and the internet enhancement project.

City Yard Connection: The City's existing network backbone was originally established in mid-1990 and has been greatly upgraded at various stages over the last 15-20 years. Currently, there are high speed fiber cable connections between City Hall and the two other Civic Center buildings (Recreation and Police). However, the wired connection between City Hall and the Yard facility—which is used for telephone, network, and internet services—was installed by the City in 2000 and has never been upgraded. It is a 25-pair copper telephone wire that uses legacy Black Box repeaters to travel the 1.2 mile distance. It currently operates at speeds less than 1.6 megabits per second (Mbps) down and 0.2 Mbps up, which is less than old DSL rated service. The existing City Yard connection has served the City well for many years, but with file sizes getting larger, a higher bandwidth option is needed.

For example, the California Department of Health emails the City's Water Supervisor links to PDF documents that are sometimes 50MB; downloading these files can take over 30 minutes. The City's Engineering Technician frequently reviews large plans or CAD drawings that are

saved on the City network servers; retrieving these files currently takes significant time, up to 9 minutes per page and the documents are frequently 17 plus pages. This means that he could have to wait up to two and a half hours to view a document. Upgrading this connection with the City Yard facility is the last link in developing a robust City-wide network. With various water system technology improvements and a planned VOIP telephone system scheduled for this fiscal year, a higher speed connection must be completed before these other projects can proceed. Therefore, staff consulted with BreaIT to identify potential replacement options, they include: installing a City-owned fiber cable, contracting for fiber cable services with Time Warner Cable, or contracting with AT&T for digital services (copper or fiber).

The installation of City-owned fiber cable was quickly rejected as too costly. The City Engineer estimates that a 1.2 mile conduit and fiber cable in the City's street right-of-way would cost well in excess of \$250,000 for design and construction. Further, this option would require trenching along Walker, La Palma, and Moody in areas where recent pavement overlays have been completed. Unforeseen circumstances such as location of utilities, which include 30-inch high pressure gas, water transmission and sewer mains, utility laterals, and miscellaneous other underground facilities may be encountered.

The Time Warner fiber cable option was highly recommended by BreaIT staff, who recently completed a similar project in their City and they have been greatly satisfied with the service. Initial meetings were held with Time Warner Cable in April to investigate the feasibility and cost of a high speed fiber cable connection between City Hall and the Yard facility. At the City's request, Time Warner Cable completed construction site surveys. Those surveys were completed last week and they indicate that significant infrastructure improvements, costing Time Warner more than \$40,000, will be needed for fiber cable installation. The project involves Time Warner connecting to their existing fiber network near Moody and La Luna, then using over-head wires traveling south on Moody, and finally trenching underground along Malaga to the Yard facility. At the City Hall site, Time Warner plans to bore under the sidewalk along Walker, from the medical building to City Hall.

After the site survey results were shared with Public Works staff, it was immediately identified that a construction conflict would exist in the Malaga and Meadowlark area. This residential tract is currently scheduled for a pavement overlay, with the project scheduled to commence in August. Due to the quickly approaching paving project and the need to trench within the street right-of-way, staff felt it was imperative to proceed with the Time Warner agreement without delay and recommended that it be approved at the June 27 Special Meeting. Unfortunately, this quick decision did not allow sufficient time to obtain other quotes.

Internet Enhancement: In less than 15 years, the internet has quickly become one of the City's most vital technology resources and demand continues to increase exponentially. In the late 1990s the City's internet connections were similar to most household internet connections. Several Department Directors were allocated dial-up modems that they used to retrieve email. In 2000, the City contracted with a local DSL provider to install the first city-wide internet service. In 2005, the City upgraded the City's internet connection by contracting with Time Warner Cable for shared 2.5 Mbps down and 0.77 Mbps up rated service. This speed served

the City well for several years, but in 2010, the City again upgraded its internet speed with Time Warner, to a shared 10 Mbps down and 2 Mbps up rated service.

The City's internet needs are very different from a typical home user. The City's internet connection is shared amongst 65 full-time employees, 35 part-time employees, public Wi-Fi members, and other Time Warner neighbors. Obviously, not all of these parties use the connection at the same time, but the City's connection frequently handles 20 or more employees sharing the internet. This ever increasing demand for internet bandwidth both up and down continues to cause inefficiencies. The City is gradually moving towards more "cloud" based computing, which requires higher speeds and more reliable internet connections. The City is already using remote back-up services. Because of the current slow bandwidth up speed, it takes 40 plus hours to complete this backup, which means the backup has to be completed over four nights each week. Also, because the back-up process uses large amounts of bandwidth over-night, it greatly reduces internet access efficiencies for our 24-hour police operations and when staff is attempting to upload large documents to the website after hours.

With Time Warner Cable planning to install fiber cable into the City Hall building for the Yard connection project, it was recommended that an improved internet connection could also occur at no additional installation cost. Therefore, not wanting to reduce our internet download speed a 10 Mbps up and down rated service was requested from Time Warner. As the internet, becomes more and more critical to the City's operations the desire for increased speed/bandwidth will also increase.

### **SUMMARY:**

On June 28, staff contacted the City's AT&T representative regarding this proposed technology upgrade project and a conference call was conducted on June 29 with AT&T technical staff. AT&T has indicated that they could provide comparable services for the City using copper wire and/or fiber cable; but additional engineering surveys would need to be completed. AT&T indicated that their copper based network can support data transmission speeds up to 12Mbps in ideal situations, using multiple bonded T-1 circuits. If the engineering survey reveals that copper based cable can support the City's desired 10Mbps speeds, AT&T has indicated no significant infrastructure changes would be needed; therefore, that service could be provided within the City's schedule. It is critical to note, that if this copper based option was selected, there would be no room for bandwidth expansion in the future. The City has also experienced numerous telephone outages—some multiple days—due to the current AT&T copper connection, which goes through two repeaters to reach their central office. Therefore staff anticipates that the engineering survey will reveal significant deficiencies with the copper based services.

If that is the case, AT&T has indicated that fiber cable services would be required for this upgrade project and they would need at least 4 months to engineer and install that level of service. AT&T representatives also indicated that fiber cable would likely result in special

construction costs. AT&T representatives are completing monthly price estimates for the various options and that costing will be provided at the July 3 meeting.

Therefore, based on the time constraints of the scheduled paving project, the following options have been identified at this time: (1) delay the paving project so AT&T can complete engineering surveys and provide a formal proposal; (2) remove this residential tract from the scheduled paving project so AT&T can provide a formal proposal; or (3) approve an agreement with Time Warner Cable and complete the paving project as scheduled.

Option 1: The residential paving project was specifically scheduled to occur during August to avoid school related traffic problems and to ensure proper temperatures for pavement application. Delaying the residential paving project for even 30 days, would cause substantial traffic congestion problems because it would not be completed before opening day at the local schools. The scheduled paving project includes critical school routes, like La Luna and Santa Margarita. The disruption to traffic patterns near the schools during the critical first days would be extreme; therefore, this option is not recommended.

Option 2: The “bird” tract, including the streets: Malaga, Meadowlark, Partridge, Sparrow, Quail, Dove, and Starling could be removed from the paving project and added to next year’s paving project. This would allow sufficient time for an AT&T proposal to be sought; however, removing such a large portion of the original paving project would likely trigger penalties to the City from the contractor. Any reduction in quantities beyond 25 percent (25%) would result in higher unit prices, as allowed by the Greenbook. The City Engineer estimates that the City would likely be penalized in excess of \$35,000 for reducing the amount of pavement materials. Further, the City would likely see an increase of up to \$5,000 in mobilization cost for next year’s paving project because this area would be outside the immediate project area for next year’s paving project. Residents within this tract might also be upset with the City for delaying their pavement improvements for an additional year. Therefore, this option is not recommended either.

Option 3: For the past 7 years, Time Warner Cable has provided the City with reliable internet services with few complaints. Most complaints involve not enough bandwidth, which would be improved with this technology enhancement project. It should also be noted, that if the City were to change internet service providers, new IP addresses would have to be reprogrammed for a variety of City applications causing disruptions in service.

Over the past two months, staff has been diligently negotiating with Time Warner Cable to identify the best pricing for this proposed technology upgrade project. The attached table indicates a variety of pricing options that have been identified for the City Council to consider, if it chooses to proceed with a Time Warner agreement.

In conclusion, the need for a high-speed connection between City Hall and the Yard facility is critical for the successful implementation of the Automated Meter Infrastructure (AMI) project, VOIP phone system, and SCADA upgrades as well as to improve current deficiencies. Further, as the City continues to move towards paperless documents, the need for increased internet bandwidths cannot be understated. The enhanced internet services will allow staff to

be more efficient, reduce over-time from large agenda postings, and expedite the completion of the planned Wi-Fi in the Park project. When the proposed technology upgrade project is completed, the City will have a robust high-speed network backbone that connects all of the City's primary facilities that should meet its needs well into the future.

**FISCAL IMPACT:**

If the City Council chooses to approve an agreement, sufficient funding does exist within the approved FY 2012-12 Water Enterprise Fund budget to pay up to \$12,000 for one-time construction costs. Further, sufficient funding also exists within the adopted Technology and Water Fund budgets to pay their respective portions of ongoing monthly costs that should not exceed \$700 each or \$1,400 total.

**Attachments:**      1.      Time Warner Pricing Options

**Time Warner Cable**  
**Dedicated Internet & Metro Ethernet (pt. to pt.)**

|  | Currently | No Down; 36mo | \$3K Down; 36mo | \$6K Down; 36mo | \$12K down; 36mo | No Down; 60mo | \$3K Down; 60mo | \$6K down; 60mo | \$12K down; 60mo |
|--|-----------|---------------|-----------------|-----------------|------------------|---------------|-----------------|-----------------|------------------|
| Term   | N/A       | 36            | 36              | 36              | 36               | 60            | 60              | 60              | 60               |
| Install Cost (one-time)                                      | \$ -      | \$ -          | \$ 3,000        | \$ 6,000        | \$ 12,000        | \$ -          | \$ 3,000        | \$ 6,000        | \$ 12,000        |
| IP Addresses Monthly   | \$ 35     | \$ 35         | \$ 35           | \$ 35           | \$ 35            | \$ 35         | \$ 35           | \$ 35           | \$ 35            |
| Dedicated Internet 10M/10M Monthly (currently 10M/2M shared) | \$ 301    | \$ 900        | \$ 850          | \$ 700          | \$ 650           | \$ 835        | \$ 800          | \$ 650          | \$ 565           |
| City Yard Point to Point 5M Monthly                          | N/A       | \$ 700        | \$ 675          | \$ 650          | \$ 640           | \$ 690        | \$ 670          | \$ 625          | \$ 599           |
| OR   | OR        | OR            | OR              | OR              | OR               | OR            | OR              | OR              | OR               |
| City Yard Point to Point 10M Monthly                         | N/A       | \$ 840        | \$ 780          | \$ 750          | \$ 700           | \$ 805        | \$ 730          | \$ 675          | \$ 650           |
| <b>5M Point to Point</b>                                     |           |               |                 |                 |                  |               |                 |                 |                  |
| Total 1st Yr Cost  | \$ 4,032  | \$ 19,620     | \$ 21,720       | \$ 22,620       | \$ 27,900        | \$ 18,720     | \$ 21,060       | \$ 21,720       | \$ 26,388        |
| Annual Cost  | \$ 4,032  | \$ 19,620     | \$ 18,720       | \$ 16,620       | \$ 15,900        | \$ 18,720     | \$ 18,060       | \$ 15,720       | \$ 14,388        |
| Total 3yr Cost   | Unk       | \$ 58,860     | \$ 59,160       | \$ 55,860       | \$ 59,700        | \$ 56,160     | \$ 57,180       | \$ 53,160       | \$ 55,164        |
| Total 5yr Cost   | Unk       | Unk           | Unk             | Unk             | Unk              | \$ 93,600     | \$ 93,300       | \$ 84,600       | \$ 83,940        |
| <b>10M Point to Point</b>                                    |           |               |                 |                 |                  |               |                 |                 |                  |
| Total 1st Yr Cost  | \$ 4,032  | \$ 21,300     | \$ 22,980       | \$ 23,820       | \$ 28,620        | \$ 20,100     | \$ 21,780       | \$ 22,320       | \$ 27,000        |
| Annual Cost  | \$ 4,032  | \$ 21,300     | \$ 19,980       | \$ 17,820       | \$ 16,620        | \$ 20,100     | \$ 18,780       | \$ 16,320       | \$ 15,000        |
| Total 3yr Cost   | Unk       | \$ 63,900     | \$ 62,940       | \$ 59,460       | \$ 61,860        | \$ 60,300     | \$ 59,340       | \$ 54,960       | \$ 57,000        |
| Total 5yr Cost   | Unk       | Unk           | Unk             | Unk             | Unk              | \$ 100,500    | \$ 96,900       | \$ 87,600       | \$ 87,000        |