

ORDINANCE NO. 63-1998

AN ORDINANCE OF THE CITY OF ABILENE AMENDING CHAPTER 12, "FRANCHISES" OF THE ABILENE MUNICIPAL CODE; PROVIDING A SEVERABILITY CLAUSE, DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 12, "Franchises," is hereby amended by reference as set forth in Exhibit "A". All Cable Franchises approved on or after December 17, 1998 shall be in conformance with the procedures and standards as set forth in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

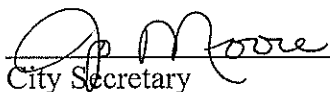
PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as delineated in Section 1.5 of Exhibit "A". Each day such a violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after notice of its publication in the newspaper as provided by Section 19 of the City Charter of the City of Abilene.

PASSED ON FIRST READING this 10 day of December, A.D. 1998.

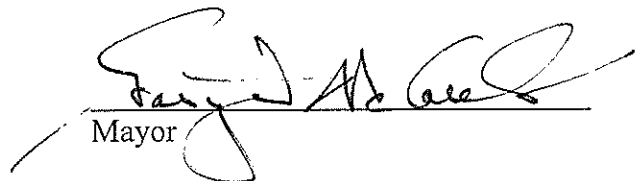
A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 13 day of December 1998, the same being more than twenty-four (24) hours prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on second and final reading.

PASSED ON SECOND AND FINAL READING this 17 day of December, A.D. 1998.

ATTEST:

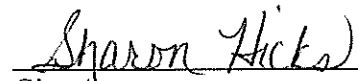


City Secretary



Mayor

APPROVED:



City Attorney

EXHIBIT "A"

Amend: Chapter 12 by deleting Section numbers.

Amend: Article II. Cable Television as follows:

1. Delete Article II in its entirety.
2. Replace with Article II. Cable Franchise as specified below.

ARTICLE II. CABLE FRANCHISE

SECTION 1 GENERAL

Section 1.1 – Purpose

The purpose and intent of this Ordinance is to:

- (a) establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the use of City Property and Public Rights-of-Way to provide Cable Service within the City;
- (b) permit and manage reasonable access to the property and Public Rights-of-Way of the City on a non-discriminatory and competitively neutral basis;
- (c) conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City;
- (d) assure that the City's current and ongoing costs of granting and regulating private access to and use of City Property and Public Rights-of-Way are fully paid by the Persons seeking such access and causing such costs on a non-discriminatory and competitively neutral basis;
- (e) secure fair and reasonable compensation on a non-discriminatory and competitively neutral basis to the City and the residents of the City for permitting private use of City Property and Public Rights-of-Way;
- (f) assure that all Cable Service providers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- (g) assure that the City can continue to fairly and responsibly protect the public health, safety and welfare;
- (h) enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.

Section 1.2 – Definitions

For the purpose of this Ordinance, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (a) “Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
- (b) “Basic Cable Service” means any category of Cable Service or other service provided by Grantee for which a separate rate is charged and which includes the retransmission of local television broadcast signals.
- (c) “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §532, et seq., as now and hereafter amended.
- (d) “Cable Service” means:
 - (1) the one-way transmission to subscribers of (i) video programming, defined as programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or (ii) other programming service, defined as information that Grantee makes available to all Subscribers generally, and
 - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

For the purpose of this Ordinance, Information Service, as defined below, shall be considered a Cable Service.

- (e) “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes, but is not necessarily limited to, video programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) a facility that serves Subscribers without using the Public Rights-of-Way; or
 - (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers.
- (f) “City” means the City of Abilene, Texas, in its present incorporated form or as it may be changed by annexation.

- (g) "City Property" means and includes all real property owned by the City, other than Public Rights-of-Way as that term is defined herein, and all property held in a proprietary capacity by the City.
- (h) "Educational Institution" means any primary or secondary school accredited by the Texas Education Agency, or any college or university accredited by the Southern Association of Colleges and Universities, which is located within the City.
- (i) "Excess Capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the Public Rights-of-Way that is or will be available for use for additional Facilities.
- (j) "Facilities" means the plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, poles, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer Cable Service.
- (k) "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications and cable carriers, services and providers on a national level.
- (l) "Franchise Area" means the area within the City limits and any area henceforth annexed during the franchise term.
- (m) "Governing Body" means the Mayor and City Council of the City.
- (n) "Grantee" means the Person to whom or which a franchise is granted under this Ordinance, and the lawful successor, transferee, or assignee of said Person.
- (o) "Gross Revenue" means any and all consideration of any kind or nature, including without limitation, cash, credits, property and in-kind contributions (services or goods) received by Grantee or Affiliates which is derived from (or by way of clarification and not expansion, attributable to or arising from) the operation of Grantee's Cable System, provision of Cable Service, provision of Information Service, and the lease or license of Grantee's Cable System. It is the intent of the parties to include in the term Gross Revenue all consideration to Grantee and Affiliates to the fullest extent allowed by law. For purposes of this definition, the term "Affiliate" is limited to an entity acting as a provider of a service authorized by this franchise.

Gross Revenue includes by way of illustration and not limitation, all fees charged Subscribers for any and all services provided by Grantee over the Cable System, provision of Cable Service, provision of Information Service, and any lease or license of Grantee's Cable System, and all compensation received by Grantee or Affiliates from any source which is using the billing functions of the Cable System, sales or commissions for any product or services derived from the operation of the

Cable System, sales or commissions which are paid to Grantee as compensation for promotion or exhibition of any products or services on the Cable System, and sales or commissions derived from the sale or rental of Cable System's Subscriber list.

Gross Revenue does not include any revenue not actually received, even if billed (e.g., bad debt).

Gross Revenue includes an allocated portion of all revenue derived by Grantee or Affiliates pursuant to regional or national compensation arrangements for any service or activity derived from the operation of the Cable System in the City, e.g. advertising and sale or rental of Subscriber lists. The allocation shall be based on the number of Subscribers in the City divided by the total number of Subscribers relevant to such regional or national arrangements.

Revenue of an Affiliate derived from the operation of the Cable System, provision of Cable Service, provision of Information Service, and any lease or license of Grantee's Cable System shall be Gross Revenue to the extent the treatment of such revenue as revenue of Affiliate and not Grantee has the effect of avoiding the payment of franchise fees which would otherwise be paid to the City. In no event shall revenue of an Affiliate be Gross Revenue to the Grantee if such revenue is otherwise subject to franchise fees to be paid to the City.

- (p) "Information Service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. For the purpose of this Ordinance, Information Service, as defined herein, shall be considered a Cable Service.
- (q) "Law" means any and all applicable laws, including but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104 §110 Stat. 70, codified at 47 U.S.C. and subsequent amendments, and all orders, rules, tariffs, guidelines, and regulations issued by the Federal Communications Commission or the governing State authority pursuant thereto, as well as all applicable State and City law. The term Law encompasses statutory law, administrative regulations, and case law.
- (r) "Overhead Facilities" means utility poles and Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.
- (s) "Person" means and includes corporations, companies, associations, organizations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

- (t) “Public Rights-of-Way” means and includes any and all highways, streets, bridges, tunnels, alleys, parkway or walkway for vehicular or pedestrian travel, now or hereafter owned or controlled by the City, but only to the extent of the City’s right, title, interest or authority to regulate the use and occupancy of such for Facilities. This also includes City-owned easements which authorize placement of Facilities in said easement.
- (u) “PUC” or “Public Utility Commission of Texas” means the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications and cable carriers, services and providers in the State.
- (v) “State” means the State of Texas.
- (w) “Subscriber” means a lawful recipient of Cable Service or Information Service delivered through the Cable System by Grantee.
- (x) “Surplus Space” means that portion of the Usable Space on a utility pole which has the necessary clearance from other pole users to allow its use for a pole attachment.
- (y) “Underground Facilities” means Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.
- (z) “Usable Space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum necessary vertical clearance.
- (aa) “User” means a Person using a Cable System for purposes of production or transmission of material to Subscribers, as contrasted with receipt in a Subscriber capacity.

Section 1.3 – Cable Franchise Required

Except as otherwise provided herein, any Person who desires to construct, install, operate, maintain or locate facilities on City Property or in any Public Rights-of-Way for the purpose of providing Cable Service to Subscribers in the City shall first obtain a cable franchise from the City as provided in the City’s current cable franchise ordinances in effect at the time the cable franchise is sought.

Section 1.4 – Application to Existing Franchise Ordinances and Agreements

This Ordinance shall have no effect on any existing franchise ordinance or franchise agreement until:

- (a) the expiration of said franchise ordinance or agreement;
- (b) an amendment is added to an unexpired franchise ordinance or franchise agreement,

unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

Section 1.5 – Penalties

Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance after receiving written notice of same from the City Manager or his or her designated representative shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

Section 1.6 – No Waiver for Non-Enforcement

Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance or Grantee’s franchise agreement by any failure or omission of the City upon any one or more occasions to insist upon, enforce, or otherwise seek compliance with such terms and conditions.

Section 1.7 – Other Remedies

Nothing in this ordinance shall be construed as limiting any remedies that the City or Grantee may have, at Law, for enforcement of this ordinance.

Section 1.8 – Severability

If any Section, Subsection, sentence, clause, phrase, or other portion of this ordinance, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Section 1.9 – Reservation of Rights

The City hereby reserves to itself all rights, privileges, and interests which it has or may hereafter acquire, and nothing in this Ordinance shall be construed otherwise unless it is specifically set forth in this Ordinance.

Section 1.10 – Amendment to Ordinance

The City shall have the right to amend this Ordinance, and any amendment pursuant to this right shall be fully incorporated into any franchise agreement granted under this Ordinance. Such amendment shall not materially alter the terms of Grantee’s franchise agreement without Grantee’s approval.

If additional cable franchises are granted by the City which convey upon Persons, corporations or entities, other than Grantee, privileges or benefits greater than those enjoyed by Grantee

hereunder, or obligations less than those required of Grantee hereunder, the City and Grantee shall negotiate in good faith to amend this Ordinance accordingly.

SECTION 2 CABLE FRANCHISE

Section 2.1 – Cable Franchise

A cable franchise shall be required of any Person who desires to occupy City Property or Public Rights-of-Way for the purpose of providing Cable Service to any Subscriber or area in the City.

Section 2.2 – Franchise Application

Any Person that desires a cable franchise shall file an application with the City Secretary which shall include the following information:

- (a) The identity of the franchise applicant, including all Affiliates of the applicant, providing the following:
 - (1) the name, address, and telephone number of the applicant;
 - (2) the names, residence, and business addresses of all officers and directors of the applicant;
 - (3) the names, residence, and business addresses of all officers and Persons having any share of the ownership of the applicant and the respective share of each such Person;
 - (4) the names and addresses of any Affiliates of the applicant, a statement describing the nature of any such Affiliate, including but not limited to Cable Systems owned or controlled by the applicant or its Affiliates and the areas served thereby.
- (b) A detailed description of all previous experience of the applicant in providing Cable Service and in related or similar fields.
- (c) A description of the Cable Service that is or will be offered or provided by the franchise applicant over its existing or proposed facilities, including programming and services, any optional premium services and any Information Service, both currently offered and proposed to be offered. A statement or schedule setting forth classifications of rates and charges to be made against Subscribers and all rates and charges as to each of said classifications, including installation charges and service charges shall be provided.

- (d) A description of the Cable System that will be used by the applicant to offer or provide such Cable Service, including:
 - (1) a detailed map indicating all areas within the City currently served;
 - (2) a detailed map indicating all areas proposed to be served during the franchise period and a proposed time schedule for installation of equipment necessary to provide such service; and
 - (3) a statement describing the actual equipment and operational standards proposed by the applicant and that such standards of operations are in compliance with or exceed those contained in the Rules and Regulations of the FCC.
- (e) Preliminary engineering plans and specifications of any new facilities to be located within the City, if known at the time of application, in sufficient detail to identify:
 - (1) the location and route of applicant's proposed Cable System facilities.
 - (2) the location of all overhead and underground public utility, cable, water, sewer drainage, telecommunication and other facilities on City Property or within the Public Rights-of-Way along the proposed route.
 - (3) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- (f) If applicant is proposing to install new Overhead Facilities, satisfactory evidence that the Cable System Facilities cannot reasonably be installed in new or existing ducts or conduits, and that Surplus Space is available for locating its Cable System Facilities on existing utility poles along the proposed route. This showing may be satisfied by submission of a sworn affidavit setting forth, in detail, the relevant facts supporting applicant's contentions.
- (g) If applicant is proposing to install new Underground Facilities in existing ducts or conduits under City Property or within the Public Rights-of-Way, information in sufficient detail to identify:
 - (1) the Excess Capacity currently available in such ducts or conduits before installation of applicant's Facilities;
 - (2) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of applicant's Facilities.
- (h) If applicant is proposing to install new Underground Facilities within new ducts or conduits to be constructed under City Property or within the Public Rights-of-Way:

- (1) the location proposed for the new ducts or conduits;
 - (2) the Excess Capacity that will exist in such ducts or conduits after installation of applicant's Facilities.
- (i) A preliminary construction schedule and completion dates.
 - (j) A preliminary traffic control plan.
 - (k) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to comply with all requirements and obligations imposed upon Grantee under this Ordinance.
 - (l) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the Facilities and to offer or provide Cable Service.
 - (m) A description of the services or Facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions.
 - (n) All fees, deposits or charges required to accompany the franchise application pursuant to Section 4 of this Ordinance.
 - (o) Such other and further information as may reasonably be requested by the City Manager or his or her designee.

Section 2.3 – Determination by the City

Upon receipt of any application for franchise, the City Secretary shall refer the application to the City Manager who shall prepare or cause to be prepared a report, including recommendations respecting such application, and cause the same to be completed and filed with the Governing Body.

Within 150 days after receiving a complete application, the Governing Body shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The following standards will be used in determining whether to grant or deny an application:

- (a) The financial ability of the applicant.
- (b) The legal ability of the applicant.
- (c) The capacity of the Public Rights-of-Way or City Property to accommodate the applicant's proposed facilities.

- (d) The damage or disruption, if any, of public or private uses, facilities, improvements, service, travel or landscaping if the franchise is granted.
- (e) The public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way or on City Property.
- (f) The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- (g) The availability of reasonable alternate routes and/or locations for the proposed facilities.
- (h) Applicable Law.

Section 2.4 – Form and Content of Franchise Award

- (a) All cable franchise awards shall take the form of a municipal ordinance duly passed by the Governing Body and accepted by Grantee. Each cable franchise ordinance shall incorporate all applicable provisions of this Ordinance and shall follow a standardized format insofar as practical. Any special terms or conditions included within Grantee's franchise award shall be non-discriminatory and competitively neutral.
- (b) Every ordinance granting, renewing, extending or amending a franchise shall be, in accordance with the City Charter, read and passed at two (2) regular meetings of the Governing Body, which shall be at least one week apart. A public hearing shall be called and held on such ordinance before final passage. Appropriate notice must be published by Grantee in accordance with the City Charter, Section 111, at Grantee's sole cost.
- (c) Within thirty (30) days after the effective date of an ordinance awarding a franchise or within such extended period of time as the Governing Body in its discretion may authorize, Grantee shall file with the City Secretary its written acceptance, in a form satisfactory to the City Attorney, of the franchise agreement, together with the insurance policies required by Section 5.15, and its agreement to be bound by and to comply with and to do all things required of Grantee by the provisions of this Ordinance and the franchise agreement. Such acceptance and agreement shall be acknowledged by Grantee before a Notary Public.
- (d) Grantee agrees to provide all services specifically set forth in its application, to provide Cable Service within the City, and by its acceptance of a franchise, Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise agreement. In the event of a conflict between such application and the provisions of this Ordinance and the franchise agreement, that provision which provides the greatest benefit to the City, in the opinion of the Governing Body, shall prevail; provided that, the City, having chosen

or accepted one of the conflicting provisions, may not thereafter elect to require compliance with a different alternative of the conflicting provisions. Failure to provide services as promised in Grantee's application shall be deemed a breach of this Ordinance to which the provisions of Sections 5.20 through 5.23 of the Ordinance shall apply.

Section 2.5 – Nonexclusive Franchise

No franchise granted under this Section 2 shall confer any exclusive rights, privilege, license or franchise to occupy or use City Property or Public Rights-of-Way for delivery of Cable Service or any other purposes.

Section 2.6 – Term of Franchise

A franchise granted hereunder shall be valid for a maximum term of fifteen (15) years, subject to renewal pursuant to Sections 2.9 through 2.11, unless otherwise determined by mutual agreement of Grantee and the City. In determining the term, the City may take into consideration the legal, technical, and financial ability of Grantee to provide Cable Services.

Section 2.7 – Rights Granted

No franchise granted under this Ordinance shall convey any right, title or interest in City Property or Public Rights-of-Way, but shall be deemed a franchise only to use and occupy City Property and Public Rights-of-Way to the limited extent and for the limited purposes and term stated in the franchise agreement. Further, no franchise shall be construed as any warranty of title.

The City assumes no responsibility for securing any franchises, rights-of-way, permits, or easements that the City does not already own; but Grantee assumes the duty and responsibility for securing the same. The permission granted herein is likewise subject to applicable Law and regulations now in force or which may be enacted or promulgated by any governmental body or agency having jurisdiction.

Section 2.8 – Compensation to City

Each franchise granted under this Section 2 is subject to the City's right to fair and reasonable compensation, as specified in Section 4 herein, on a non-discriminatory and competitively neutral basis, for Grantee's use and occupancy of City Property and Public Rights-of-Way as well as the City's supervision and regulation of the same.

Section 2.9 – Renewal Applications

In addition to the provisions of applicable Law, any Grantee that desires to renew its franchise under this Section 2 shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the City for renewal of its franchise which shall include the following:

- (a) The information required pursuant to Section 2.2, as may be required by the City.
- (b) The application fee specified in Section 4.2.

Section 2.10 – Renewal Determinations

Within 150 days after receiving a complete application under Section 2.9, the Governing Body shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards:

- (a) The financial ability of the applicant.
- (b) The legal ability of the applicant.
- (c) The continuing capacity of City Property and Public Rights-of-Way to accommodate the applicant’s existing facilities.
- (d) The applicant’s compliance with the requirements of this Ordinance and the franchise agreement and its historical compliance under its current franchise.
- (e) Applicable Law.

If the renewal application is denied, the written determination shall include the reasons for non-renewal.

If the renewal application is granted, the franchise terms and conditions must be conformed as necessary to comply fully with all requirements and conditions contained in the City’s then existing cable franchise ordinance.

The term of the renewal period shall not exceed that specified in Section 2.6.

Section 2.11 – Obligation to Cure as a Condition of Renewal

No franchise shall be renewed until any material ongoing violations or defaults in Grantee’s performance of the franchise agreement, or of the requirements of this Ordinance, have been cured in accordance with Section 5.21 of this Ordinance, or a plan detailing the corrective action to be taken by Grantee has been approved by the City.

Section 2.12 – Rebuilds of Cable System or Facilities

If Grantee, either as required under Section 3.13 or of its own initiative, plans to rebuild the Cable System or Facilities in the Franchise Area, Grantee shall provide to the City Secretary a statement consisting of the information delineated in Section 2.2(c) through 2.2(j). No application fee will be required under this Section 2.

**SECTION 3
CABLE SPECIFIC REQUIREMENTS**

Section 3.1 – Service Availability and Record Request

- (a) Grantee shall provide Cable Service throughout the entire Franchise Area within three (3) years pursuant to the provisions of this Ordinance and franchise agreement and shall keep a current file of all written service complaints received by Grantee for at least the three (3) most recent years. This record shall be maintained and be available for public inspection at the local office of Grantee during regular office hours.
- (b) Grantee shall conduct a survey as requested by the City which shall include but not be limited to:
 - (1) Subscriber viewing preferences;
 - (2) Subscriber recommendations on service improvements.

The results of such surveys shall be kept on record in the office of Grantee for three (3) years following the completion of such surveys. The City shall retain the right to inspect the records of said surveys.

Section 3.2 – Subscriber Service Rates

The City shall have the right to review and approve any changes to any rate, fee and/or charge proposed by Grantee pursuant to its authority to do so by applicable federal and state law, statute, rules and regulations then in effect. The City shall be notified no less than thirty (30) days prior to any proposed change in rate, fee and/or charge.

While the City has, under current Law, only a limited right to regulate services and rates, should such Law be amended, repealed, or otherwise changed, wholly or in part, the City shall have the right to require and regulate services and rates to the extent permitted by Law. All references to services or rates in this Ordinance are subject to this provision.

Section 3.3 – Required Services and Facilities

- (a) Grantee shall provide all services and facilities as set forth by this Ordinance, and as required by the Governing Body.
- (b) In the event a program originator ceases providing a service, or in the event Grantee determines that other programming or Cable Service may be more attractive to Subscribers or other Users, Grantee may, in accordance with the following procedures, substitute services. The system, after the incorporation of such substitute services, shall maintain a diversity of public service and entertainment programs and other Cable Service, and an overall quality level of programming that

is equal to or higher than the programming level before the substitution. Nothing in a franchise shall be construed as obligating Grantee itself to produce substitute programming to replace programming deleted because the originator or supplier has ceased producing the service where an alternative comparable service is not available on a comparable basis from a different third party.

- (c) In the event of a change in channel assignment or in the video programming service over any such channel, Grantee shall provide thirty (30) days advance written notice to the City Manager or his or her designee.
- (d) Grantee shall expand the Cable System channel capacity within a reasonable period of time, so that it can meet all future cable-related needs of the community for which Subscribers are willing to pay. The desirability of additional channels shall be determined by a survey conducted by Grantee of a representative sample of the then existing Subscribers. However, in no event shall Grantee be required to expand the Cable System channel capacity in an amount greater than the number of channels for which it can reasonably recover the cost of adding the channel capacity, plus a reasonable profit, over the remaining life of this franchise.

Section 3.4 – Educational and Government Channels

- (a) Government/Educational Channel: Grantee shall provide and maintain at its own expense the necessary microwave hardware, consisting of one (1) transmitter and one (1) receiver, or other available signal transportation means of equal or greater quality transmission, to all qualifying educational institutions, for each channel dedicated primarily for educational or other community programs. In order for an educational institution to qualify for such microwave hardware, the institution must have a studio of sufficient size for live cablecasts and must conform to local origination, technical, and equipment standards equal to or greater than the industry average. Grantee shall not be responsible for providing or maintaining additional equipment, e.g., a tower or platform, to enable line-of-sight communications for the microwave hardware, the cost of which additional equipment shall be borne by the user.
 - (1) Any channel dedicated under this provision shall be made available, at a place to be designated by the City, within six (6) months of notice or request by a User to the City.
 - (2) All Educational Institutions, as defined in Section 1.2, shall have access to any channel dedicated under this Section 3.4, unless such channel has been dedicated for use by the City.
 - (3) The City reserves the right of control over any channel set aside under this provision. This shall include, but not be limited to, the right to: allocate time, designate uses, designate Users, use the channel for City programming, or appoint administrators for the use of the channel.

- (b) City Channel: Grantee shall also provide to the City and maintain at its own expense the necessary microwave hardware, consisting of one (1) transmitter and one (1) receiver or other available signal transportation means, of equal or greater quality transmission, for each channel to be dedicated for City use, if requested in writing by the City. Any channel dedicated under this provision shall be made available upon six (6) months notice by the City. Grantee shall not be responsible for providing or maintaining additional equipment, e.g., a tower or platform, to enable line-of-sight communications for the microwave hardware, the cost of which additional equipment shall be borne by the user.
- (c) New Channels: The City may make a written request for up to two (2) additional channels to be dedicated for community or educational use beyond that required in (a) above. In evaluating such request, the City shall consider the number of hours of original video programming, locally produced, on any channel existing under this Section, and any other information submitted in written form by the governmental entity, Educational Institution or Grantee. The City shall have the right to have up to two (2) additional channels dedicated for community, educational, or City purposes upon giving six (6) months notice to Grantee. Nothing in this Section shall require Grantee to add additional channel capacity to the Cable System to accommodate these channels. In no event shall an additional channel be provided until each existing channel is airing at least forty (40) hours per week of original video programming, locally produced.
- (d) Rights of the City: The City shall have the right to use any channel or channel time set aside under this or any other Section of this Ordinance, regardless of whether that channel is or has been set aside for other Users. The City shall not be required to share said channel with other Users. Whenever in the opinion of the Governing Body any channel authorized under this Section is under-utilized, the City may order or permit different or additional uses for said channel.
- (e) Required Channels: Under this Section Grantee shall be required to provide no more than a total of four (4) channels for governmental, educational or City uses. Only two (2) channels set aside for governmental or educational uses shall be required to be provided by Grantee out of its Basic Cable Service. The City reserves the right to specify that all governmental channels be located on the Basic Cable Service tier.
- (f) Obscene Material: Nothing in this Section or this Ordinance shall be construed as prohibiting the City or Grantee from specifying, in a franchise or renewal thereof, that certain Cable Services shall not be provided or shall be provided subject to conditions, if such Cable Services are obscene or are otherwise unprotected by the Constitution of the United States, or other federal or state laws.
- (g) Equipment and Personnel: Nothing within this Section shall require Grantee to provide equipment or personnel, except as specifically provided herein.

Section 3.5 – Institutional Network

To the full extent permitted by law, the City reserves the right to negotiate with Grantee to install and maintain an institutional network at locations designated by the City. The City will allow Grantee a reasonable time to install the institutional network.

Section 3.6 – Emergency Alert System

Grantee, at its sole expense, shall maintain an emergency alert system capable of interrupting all channels. This system shall enable the City or its designee to provide immediate, current information to all Subscribers from an origination point designated by the City Manager or his or her designee. The emergency alert system shall be available at all times and located in a facility approved by the City Manager or his or her designee.

Section 3.7 – Basic Service Connection to Public Buildings

Grantee shall provide at its own expense one free television outlet providing Basic Cable Service to each of the following buildings within its service area within the City limits: each hospital, fire station, police station, Educational Institution. Each building so provided shall be responsible for all internal wiring from the connection.

Section 3.8 – Service Standards

- (a) Upon termination of Cable Service to any Subscriber, Grantee shall promptly remove all of its Facilities and equipment from the premises of such Subscriber upon Subscriber's request.
- (b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (c) Grantee shall not allow its cable or other operations to interfere with television reception of Persons not served by Grantee, nor shall the system interfere with, obstruct, or hinder in any manner, the operation of the various utilities serving the residents of the City.
- (d) Grantee shall continue, through the term of the franchise, to maintain the technical, operational, and maintenance standards and quality of service set forth in this Ordinance and franchise agreement, and according to federal and state laws, and the rules and regulations of the Federal Communications Commission. Should the City find, by public hearing process, that Grantee has failed to maintain these standards and quality of service, the City may specify improvements to be made. Failure to make such improvements within three (3) months will constitute a breach of condition for which the remedy of Sections 5.21 through 5.23 are applicable.

Section 3.9 – Continuity of Service Mandatory

- (a) It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew a franchise, Grantee shall act so as to ensure, as far as practicable, that all Subscribers receive continuous, uninterrupted service under the circumstances.

In the event of a change of Grantee, or in the event a new operator acquires the system, Grantee shall cooperate with the City, new Grantee, or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system and shall be entitled to reasonable costs for its services when it no longer operates the system.

- (b) In the event Grantee fails to operate the system for four (4) consecutive days without prior approval of the City or without just cause, as determined by the City, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of Grantee's failure to perform.

Section 3.10 – Complaint Procedure

- (a) The City Manager or his or her designee is specified by the City as having primary responsibility for the continuing administration of this franchise and implementation of complaint procedures.
- (b) Grantee shall maintain a central office, which shall be open during all usual business hours, and have a publicly listed telephone number. This central office shall be operated with adequate line capability that complaints and requests for repairs or service adjustments may be received between the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday. Sufficient responsibility must be delegated locally to permit the local system manager to make timely decisions.
- (c) Subject to constraints imposed by acts of God or events over which Grantee has no control, Grantee shall maintain a repair and maintenance crew capable of responding to Subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the Subscriber for this service unless such maintenance or repair is required as a result of damage caused by the Subscriber. Grantee may charge for service calls to the Subscriber's residence that are not the result of cable failure upon approval of a rate and an equitable procedure by the City.

- (d) Grantee shall establish procedures for receiving, acting upon, and resolving Subscriber complaints to the satisfaction of the City Manager's Office. Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription. Upon request by a Subscriber, Grantee shall credit a Subscriber's account on a pro rata basis for loss of service commencing forty-eight (48) hours after notification by the Subscriber to Grantee, subject to constraints imposed by acts of God or events over which Grantee has no control.
- (e) Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the City Manager's Office. All maintenance service complaint entries shall be retained on file for a period consisting of the most recent three (3) years.
- (f) The City Manager may require that tests and analysis shall be supervised by a professional engineer not on the permanent staff of Grantee. Grantee shall pay all costs of such tests, analysis, and services of the engineer. The aforesaid engineer should sign all records of the special tests and forward to the City Manager such records with a report interpreting the results of the tests and recommending actions to be taken by Grantee and the City. Such report shall be delivered to the City Manager no later than fourteen (14) days after the City Manager formally notifies Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used; the procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.
- (g) The City Manager's right under this Section shall be limited to requiring tests, analyses, and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.

Section 3.11 – Rights of Individuals

- (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Users, or general citizens on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other applicable federal, state, and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Ordinance by reference.
- (b) Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state, and local regulations, and as amended from time to time.

- (c) No signals shall be transmitted from a Subscriber for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provision. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of two-way Cable Service activity planned; provided, however, that Grantee shall be entitled to conduct Cable System-wide or individually addressed “sweeps” for the purpose of verifying Cable System integrity, controlling return-path transmission, or billing for pay services.
- (d) Grantee, or any of its agents or employees, may not, unless and until specifically notified in writing by the Subscriber involved, sell, or otherwise make available to any party:
 - (1) Lists of the names and addresses of such Subscribers; and
 - (2) Any list which identifies the individual viewing habits of Subscribers.

Grantee shall furnish notice of such fact and a means of written notification to each Subscriber at the time of initial subscription.

Section 3.12 – Performance Evaluation Sessions

- (a) The City may request to hold scheduled performance evaluation sessions within thirty (30) days of every third anniversary date of Grantee’s award of the franchise and as may be required by federal and state law. Should the City determine a need to hold a performance evaluation session, Grantee shall be notified in writing thirty (30) days prior to the date of the evaluation.
- (b) Special evaluation sessions may be held at any time during the term of a franchise at the request of the City or Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least one (1) channel of its Cable System between the hours of 7:00 p.m. and 9:00 p.m., for ten (10) consecutive days preceding each session.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Ordinance; judicial and FCC rulings; line extension policies; and Grantee or City rules.

Section 3.13 – New Developments

- (a) The Governing Body shall have the authority to order a public hearing from time to time on the provision of additional channel capacity by Grantee or on the inclusion in Grantee's Cable System of "state-of-the-art" technology or upgraded Facilities.
- (b) If after such a hearing, the Governing Body determines: (1) that there exists a reasonable need and demand for additional channel capacity and/or state-of-the-art technology or upgraded Facilities; and (2) that provision has been made or will be made for adequate rates which will allow Grantee to remain competitive in the market and allow for a fair rate of return within the remaining years under the franchise on its investment (including the investment required to provide the additional channels and/or the state-of-the-art technology or upgraded Facilities) and will not result in economic harm or waste for Grantee, the Governing Body may order Grantee to provide a specified number of additional channels and/or specified state-of-the-art technology or upgraded Facilities. Without implying any limitations as to other provisions of this Ordinance, this Section is deemed a material provision within the meaning of Section 5.20 of this Ordinance.
- (c) Grantee shall make written reports every two (2) years to the City on "state-of-the-art" developments concerning the Cable System.

Section 3.14 – Area-wide Interconnection of Cable Systems

Grantee shall cooperate with any interconnection corporation, regional interconnection authority or City, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of Cable Systems beyond the boundaries of the City and only as required by applicable Law.

Section 3.15 – Line Extension Policy

- (a) Grantee shall extend service to any area within the City requiring up to 200 feet of cable per home adjacent to and contiguous with existing Facilities. In such a case, a newly installed Subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by Subscribers.
- (b) Where the residence, building, structure, development or subdivision of a Person requesting Cable Service by Grantee is located in areas requiring greater than 200 feet of cable per home, Grantee shall serve the businesses and/or residences requesting service without an additional charge for plant extensions (except for the usual and normal connection fees paid by Subscribers) where the average number of occupied residences passed by the cable plant necessary to serve such businesses or residences (the average density) is at least fifty (50) per mile where distance is measured from the closest existing Facilities to the area requesting Cable Service. Businesses shall not be considered in calculating the average density.

- (c) Where the average density is less than fifty (50) per mile, Grantee may establish and collect an extension charge for erecting, constructing, or extending its Facilities to the residence, building, structure, development or subdivision desiring connection to Grantee's Cable System. Grantee's charge for and decision to extend service may be based on the following criteria:
 - (a) Commercial feasibility;
 - (b) Technical practicability;
 - (c) Current cost to construct Facilities;
 - (d) The day-to-day operational and maintenance costs of cable plant after it is constructed.

Grantee shall determine the commercial feasibility of any request for service extension under this Subsection and may refuse to serve an area or areas that would cause financial harm to Grantee or be technically impractical to build or both.

- (d) If Grantee refuses to serve an area or areas, the Governing Body shall have the authority to order a public hearing to review Grantee's explanation for refusal to serve an area or areas and determine if such refusal is reasonable.

SECTION 4 FEES AND COMPENSATION

Section 4.1 – Purpose

It is the purpose of this Section to provide for reasonable and adequate compensation to the City for the use and occupancy of City Property and Public Rights-of-Way for the provisioning of Cable Service, and to further provide for the payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this Ordinance.

Section 4.2 – Application and Review Fee

- (a) Any applicant for a franchise pursuant to Section 2.2 of this Ordinance shall pay an application and review fee of Five Thousand Dollars (\$5,000).
- (b) Any applicant for a franchise renewal pursuant to Section 2.9 of this Ordinance shall pay an application and review fee of One Thousand Dollars (\$1,000.00).
- (c) The application and review fee shall be deposited with the City as part of the application for a franchise or franchise renewal filed pursuant to Section 2.2 or 2.9 of this Ordinance.

- (d) Should the ascertainable costs and expenses incurred by the City in connection with the City's review of an application for a franchise or franchise renewal exceed the amount of the application and review fee, the applicant shall reimburse the City for such excess costs and expenses within sixty (60) days after written demand therefor.

Section 4.3 – Other City Costs

Grantee shall, within thirty (30) days after written demand therefor, reimburse the City for all ascertainable costs and expenses incurred by the City in connection with any modification, amendment or transfer of the franchise or franchise agreement. Upon request, the City shall provide Grantee a written itemization of the costs and expenses in question.

Section 4.4 - Compensation for Use of Public Rights-of-Way

- (a) To compensate the City for the use and occupancy of the Public Rights-of-Way, Grantee shall pay the City a franchise fee during the life of Grantee's franchise five percent (5%) of Grantee's Gross Revenues as defined in Section 1.2.
- (b) The City reserves the right to increase the amount of the franchise fee to the extent permitted by Law.

Section 4.5 – Payment

Grantee shall remit the compensation required under Section 4.4 on a quarterly basis. Each quarterly payment shall be due on the thirtieth (30) day following the close of each calendar quarter for which the payment is calculated. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation.

Section 4.6 - Right to Audit

Grantee shall keep complete and accurate books of accounts and records of their business and operations which pertain to any Cable Service made the subject of the franchise granted hereunder in accordance with generally accepted accounting principles. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting compensation due the City under Section 4 of this Ordinance. The City may, if it sees fit, have the books and records of Grantee examined by a City representative to ascertain the correctness of the reports agreed to be filed herein, provided however, that any City audit shall be limited to verification of such reports for a period not to exceed three years prior to the date of commencement of the audit. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to Grantee by the City which notice shall include a copy of the audit report.

Section 4.7 – Interest Penalties for Untimely Payments

In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at

the annual rate equivalent to an average of the existing prime rate of local banking institutions in the City of Abilene, Texas.

SECTION 5 CONDITIONS OF GRANT

Section 5.1 – Location of Facilities

All Facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (a) Grantee shall install its Facilities within an existing underground duct or conduit whenever Excess Capacity exists within such utility facility, absent the submission by Grantee or an affected Person of satisfactory evidence to the City Manager or his or her designee that this requirement is not reasonable or feasible in any specific instance.
- (b) A Grantee with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, provided Surplus Space is available. If the installation of a new pole or poles is necessary, the number, location and installation of same shall be as designated by the City.
- (c) Whenever any existing electric utilities, Cable System Facilities or telecommunications facilities are located underground within a Public Right-of-Way of the City, a Grantee with permission to occupy the same Public Right-of-Way must also locate its Facilities underground, absent a compelling demonstration by Grantee or an affected Person that this requirement is not reasonable or feasible in any specific instance.
- (d) Whenever any new or existing electric utilities, Cable System Facilities or telecommunications facilities are located or relocated underground within a Public Right-of-Way, a Grantee that currently occupies the same Public Right-of-Way shall relocate its Facilities underground within a reasonable period of time, which shall not be later than the end of the franchise term unless Grantee makes a compelling demonstration that this requirement is not reasonable or feasible in any specific instance. Absent extraordinary circumstances or undue hardship as determined by the City Manager or his or her designee, such relocation shall be made concurrently to minimize the disruption of the Public Rights-of-Way.
- (e) In determining whether any requirement under this Section is unreasonable or infeasible, the City Manager or his or her designee shall consider, among other things, whether the requirement would subject Grantee or other affected Person to an unreasonably increased risk of service interruption, or to an unreasonably increased liability for accidents, or to an unreasonable delay in construction or in the availability of its services, or to any other unreasonable technical or economic burden.

Section 5.2 – Construction Permits

Grantee is required to obtain construction permits to the extent and in the manner required in Section 6 of this Ordinance.

Section 5.3 – Interference with the Public Rights-of-Way

- (a) No Grantee may locate or maintain its Facilities so as to unreasonably interfere with the use of City Property or Public Rights-of-Way by the City, by the general public or by other Persons authorized to use or be present in or upon City Property or Public Rights-of-Way. In the event of unreasonable interference, such Facilities shall be moved by Grantee, temporarily or permanently, as determined by the City Manager or his or her designee upon reasonable notice.
- (b) If the temporary removal of Grantee's Overhead Facilities is necessary to permit the moving of houses or other bulky structures, Grantee shall be required to temporarily remove the same upon not less than forty-eight (48) hours advance notice by a party permitted to move a building, house or other bulky structure pursuant to Sections 8-701 through 8-709, Abilene Municipal Code. The expenses of such temporary relocation or removal of Overhead Facilities shall be paid by the party or parties requesting and benefiting from such temporary relocation or removal.
- (c) Grantee shall have the authority to trim trees so as to prevent the branches of such trees from coming in contact with the Facilities of Grantee. The City shall have the option to perform, supervise and direct such trimming. Any trimming shall be at the expense of Grantee.

Section 5.4 – Damage to Property

No Grantee nor any Person acting on Grantee's behalf shall take any action or permit any action to be done which may impair or damage any City Property, Public Rights-of-Way, or other property located in, on or adjacent thereto.

Section 5.5 – Notice of Work

Unless otherwise provided in this Ordinance, no Grantee nor any Person acting on Grantee's behalf shall commence any non-emergency work in or about City Property or Public Rights-of-Way without the provision of advance notice to the City. Advance notice shall consist of, at minimum, the request by Grantee or any Person acting on Grantee's behalf for **and** approval by City of the appropriate construction permits prior to the initiation of construction work. Grantee or Person acting on Grantee's behalf will receive a copy of the City's current excavation and surface restoration standards with each permit.

Section 5.6 – Repair and Emergency Work

In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided Grantee shall notify the City as promptly as possible, before such repair or emergency work or within one (1) working day if advance notice is not practicable, and obtain the appropriate construction permits.

Section 5.7 – Maintenance of Facilities

Grantee shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable Law.

Section 5.8 – Relocation or Removal of Facilities

- (a) Within thirty (30) days following written notice from the City, Grantee shall, without claim for reimbursement or damages against the City, temporarily or permanently remove, relocate, change or alter the position of any Facilities on City Property or within the Public Rights-of-Way whenever the Governing Body shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
 - (1) The construction, repair, maintenance or installation of any City or other public improvement.
 - (2) The operations of the City or other governmental entity.
- (b) In any instance in which operation of Subsection (a) is deemed by Grantee to impose a financial hardship on Grantee, Grantee shall have the right to present alternative proposals to the City, and the City shall give due consideration to any such alternative proposals.
- (c) If the City requires Grantee to adopt or conform its Facilities to enable any other entity or Person, except the City, to use, or to use with greater convenience, Public Rights-of-Way or City Property, Grantee shall not be required to make any such changes until such other entity or Person shall reimburse or make arrangements satisfactory to Grantee to reimburse Grantee for any loss and expense caused by or arising out of such change; provided, however, that the City shall never be liable for such reimbursement.
- (d) If after proper notice Grantee fails or refuses to remove or abate the Facilities in question, the City retains the rights and privilege to remove or abate any such Facilities on City Property or within the Public Rights-of-Way, at the sole cost and expense of Grantee. In performing or permitting such work to be done, the City shall not be liable to any Person for any damages to any Facilities on City Property or within the Public Rights-of-Way unless directly and proximately caused by the

willful intentional or malicious act by the City, and shall not be liable in any event for any consequential damages relating to service interruptions.

Section 5.9 – Removal of Unauthorized Facilities

Within thirty (30) days following written notice from the City, Grantee or other Person that owns, controls or maintains any unauthorized Facilities or related appurtenances on City Property or within the Public Rights-of-Way shall, at its own expense, remove such Facilities or appurtenances from City Property or the Public Rights-of-Way. Facilities are unauthorized and subject to removal in the following circumstances:

- (a) Upon expiration or termination of Grantee's franchise.
- (b) Upon abandonment of Facilities on City Property or within the Public Rights-of-Way.
- (c) If the Facilities were constructed or installed without the prior grant of a franchise.
- (d) If the Facilities were constructed or installed without the prior issuance of a required construction permit.

If after proper notice the owner fails or refuses to remove or abate the Facilities in question, the City retains the rights and privilege to remove or abate any such Facilities on City Property or within the Public Rights-of-Way, at the sole cost and expense of the owner. In performing or permitting such work to be done, the City shall not be liable to any Person for any damages to any Facilities on City Property or within the Public Right-of-Way unless directly and proximately caused by the willful intentional or malicious act by the City, and shall not be liable in any event for any consequential damages relating to service interruptions.

Section 5.10 – Emergency Removal or Relocation of Facilities

The City retains the rights and privilege to cut or move any Facilities located on City Property or within the Public Rights-of-Way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall cooperate to the extent possible with Grantee in such instances to assure continuity of service, and to afford Grantee the opportunity to make such relocation and/or removal itself where deemed reasonable, at the City's sole discretion.

Section 5.11 – Damage to Grantee's Facilities

Unless sovereign immunity is waived, or unless directly and proximately caused by the willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any Facilities on City Property or within the Public Rights-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on City Property or in the Public Rights-of-Way by or on behalf of the City, and shall not be liable in any event for any consequential damages relating to service interruptions.

Section 5.12 – Restoration of Public Rights-of-Way and City Property

- (a) When Grantee, or any Person acting on its behalf, does any work in or affecting any Public Rights-of-Way, or City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Public Rights-of-Way or City Property to as good a condition as existed before the work was undertaken. Grantee, or any Person acting on its behalf, must complete all restoration work prior to vacating job site.
- (b) If weather or other conditions do not permit the complete restoration required by this Subsection, Grantee shall temporarily restore the affected Public Rights-of-Way or City Property. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration within five (5) days when the weather or other conditions no longer prevent such permanent restoration.
- (c) Grantee or other Person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
- (d) If, within one hundred and eighty (180) days of completion of construction, restoration of the Public Rights-of-Way or City Property is found not to meet the City's excavation and/or surface standards, written notice will be sent to Grantee with information concerning the location and condition of the deficient restoration. Grantee will then have thirty (30) days to remove the substandard restoration and restore the Public Rights-of-Way or City Property in compliance with City standards. If Grantee has not complied within thirty (30) days, the City retains the rights and privilege to remove the substandard restoration and restore in compliance with City standards at the sole cost and expense of Grantee, including any and all City administrative and overhead costs.
- (e) Grantee shall be responsible for all maintenance costs incurred as a result of any defects, impairments or other substandard condition in the Public Rights-of-Way caused by the construction, maintenance, or restoration work of Grantee or any Person acting on Grantee's behalf for a period of one (1) year from the date the surface of the Public Rights-of-Way is restored by Grantee or Person acting on Grantee's behalf.
- (f) No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work and restore the Public Rights-of-Way.

Section 5.13 – Facilities Maps

- (a) Within a reasonable time after completing any new construction of or expansion of

existing Facilities in the Public Rights-of-Way or on City Property, but in no case more than sixty (60) days after such completion, Grantee shall provide the City access to an accurate as-built strand map or maps certifying the location of all such new or expanded Facilities in the Public Rights-of-Way or on City Property.

- (b) Grantee shall maintain maps of all of Grantee's Facilities located on City Property or within the Public Rights-of-Way. Such strand maps shall be made available for review by other Grantees, upon reasonable request, to the extent such review may be necessary to determine whether the sharing of conduit in a given location is feasible. Within five (5) business days of a request from the City, Grantee shall provide the City with a copy of any portion of those strand maps showing the location of Grantee's Facilities within the Public Rights-of-Way or on City Property in any specific geographic area designated by the City. Such strand map or maps shall be provided at no cost to the City. Grantee shall also promptly locate any Underground Facilities at the City's request at no cost to the City.

Section 5.14 – Duty to Provide Information

Within twenty (20) days of a written request from the City Manager or his or her representatives, Grantee shall furnish the City with information sufficient to demonstrate:

- (a) That Grantee has complied with all requirements of this Ordinance.
- (b) That all franchise fees due the City in connection with the Cable Service and Facilities provided by Grantee have been properly calculated and paid by Grantee.
- (c) All books, records, maps and other documents, maintained by Grantee with respect to its Facilities on City Property or within the Public Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals.

Grantee shall furnish the City Attorney with notices of all initial petitions, applications, and reports submitted by Grantee to the FCC, the PUC, the State Legislature or the Congress of the United States relating to any matters affecting both the use of Public Rights-of-Way and Cable Service within the City. Upon written request, Grantee shall furnish the City Attorney with copies of all such documents.

Section 5.15 – Grantee Insurance

- (a) General requirements: Grantee must maintain the types and amounts of required insurance throughout the term of this franchise agreement. Grantee is solely responsible for providing a certificate of insurance evidencing the required coverage types and amounts. The City may terminate this franchise agreement if Grantee fails to timely comply with these requirements, pursuant to Section 5.20.

Required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of

Texas. All policies are subject to examination and approval by the City's Office of Risk Management for their adequacy as to content, form of protection, and providing company.

Required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to the City, including under any third party liability policy.

Before this Agreement is executed, Grantee must provide to the City Secretary an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, Grantee must furnish new certificates or copies of the policy before any existing certificate expires.

(b) Additional requirements: The required liability insurances and their certificates must:

- (1) Name the City as an additional insured with respect to operations for which this Agreement is made.
- (2) Provide for thirty (30) days advance written notice of cancellation or material change.

(c) Required coverages and amounts:

<u>Type</u>	<u>Amount</u>
1. Workers' Compensation Employers' Liability	Statutory One Million Dollars (\$1,000,000) per occurrence
2. Commercial (Public) Liability including but not limited to: <ul style="list-style-type: none">• Premises/Operations• Independent Contractors• Products/Completed Operations• Contractual Liability (Insuring above indemnity) And where the exposures exist: <ul style="list-style-type: none">• Explosion, Collapse and Underground	One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage (per occurrence)
3. Business Automobile Liability to include coverage for: <ul style="list-style-type: none">• Owned/Leased Autos• Non-Owned Autos• Hired Cars	One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage (per occurrence)

- (d) Unless otherwise precluded by Law, Grantee may satisfy one or more of the insurance requirements specified in (c) through self-insurance, provided, however, that no Grantee may self-insure without the prior approval of the City. In no event shall a self-insurance proposal be approved absent a showing to the City's satisfaction that Grantee is in a sound financial condition, and that Grantee maintains a dedicated reserve in an amount sufficient to ensure that Grantee's outstanding potential claims do not at any time exceed fifty (50) percent of the value of the reserve.

Section 5.16 – General Indemnification

It is agreed for all purposes hereunder, Grantee is and shall be an independent contractor and shall not, with respect to its acts or omissions, be deemed an agent or employee of the City.

Grantee agrees to indemnify and hold harmless and defend the City, its officers, agents and employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from Grantee's work and/or activities conducted in connection with or incidental to this franchise agreement and from any liability arising out of or resulting from the intentional acts or negligence, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Grantee, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other Persons.

Grantee further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, subcontractors, licensees, invitees and other Persons, as well as their property, while in the vicinity where their work is being done. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of Grantee, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other Persons.

The City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the premises, including the Public Rights-of-Way, responsibility for all such defects being expressly assumed by Grantee. Grantee agrees that this indemnity provision applies to all claims, suits, demands, and actions arising from all premise defects or conditions.

It is further agreed with respect to this indemnity, that the City and Grantee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect Grantee or City, and the City shall have the right to compromise and defend the same to the extent of its own interests.

It is the expressed intention of the parties hereto, both City and Grantee, that the indemnity provided for in this agreement is indemnity by Grantee to indemnify and protect the City from the consequences of the City's own negligence while City is participating in this agreement where that negligence is a concurring cause of injury, death, or damage. Furthermore, the indemnity provided for in this agreement shall have no application to any claim, loss, damage, cause of action, suit, and liability where the injury, death, or damage results from the sole negligence of the City, unmixed with the fault of any other Person or entity.

Section 5.17 – Performance and Payment Bonds

- (a) Performance and/or payment bonds may be required for any proposed construction activities. Within thirty (30) days after the notification of a need for a performance and/or payment bond, Grantee shall obtain and maintain at its sole cost and expense, and file with the City Secretary, the appropriate bond in the amount to be specified to guarantee the timely construction and/or reconstruction and full activation of the Cable System and the safeguarding of damage to private property and restoration of damages incurred with other Persons in the Public Rights-of-Way.
- (b) If the value of the construction and/or reconstruction contemplated is below \$25,000, or as amended by Law, performance and payment bonds are not required.
- (c) If the value of the construction and/or reconstruction contemplated exceeds \$25,000, Grantee must furnish a payment bond. If the value of the construction and/or reconstruction contemplated exceeds \$100,000, Grantee must also furnish a performance bond prior to the start of the work and delivered to the City. The bonds, for the full construction amount, must be executed by a corporate surety company authorized to do business in the State and acceptable to the City. Bonds for projects using federal dollars must be underwritten by a surety named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.
- (d) The City may require additional security if the initial surety becomes insolvent, bankrupt, or otherwise financially unable to protect the City under the terms of the franchise agreement. The City's requiring new or additional security relieves neither the original surety nor Grantee of its obligations under the franchise agreement.

Section 5.18 – Coordination of Construction Activities

All Grantees are required to cooperate with the City and with each other.

- (a) Grantee shall provide the name and contact information for a single point-of-contact for all construction projects undertaken by Grantee or any Person acting on its behalf.

- (b) By February 1 of each year, Grantee shall provide the City Manager or his or her designee with a schedule of its then known proposed construction activities in, around, or that may affect City Property or the Public Rights-of-Way.
- (c) Grantee shall meet with the City Manager or his or her designee, other Grantees, and users of City Property and Public Rights-of-Way as determined by the City Manager or his or her designee, but in no case less than once a calendar year or more frequently than once a month, to schedule and coordinate construction on City Property and in the Public Rights-of-Way.
- (d) All construction locations, activities and schedules shall be coordinated, as ordered by the City Manager or his or her designee, to minimize public inconvenience, disruption or damages.

Section 5.19 – Assignments or Transfers of Franchise

A franchise may not be transferred, assigned or disposed of by sale, lease, merger, or consolidation by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein. Transactions between affiliated entities are not exempt from City approval.

Grantee shall promptly notify the City of any actual or proposed change in control of Grantee. This shall include, but not be limited to, transfers of Grantee or acquisitions of Grantee by any other party. The word “control,” as used herein, is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of Grantee shall make the franchise subject to cancellation unless and until the city shall have consented thereto, which consent will not reasonably be withheld without good cause shown. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualifications of the prospective controlling party and Grantee shall assist the City in any such inquiry.

- (a) Grantee and the proposed assignee or transferee of the franchise shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of transfer:
 - (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
 - (2) All information required of a cable franchise applicant pursuant to Section 2.2 of this Ordinance with respect to the proposed transferee or assignee;
 - (3) Any other information reasonably required by the City.

- (b) No transfer shall be approved unless the assignee or transferee has the legal, financial and other requisite qualifications to own, hold and operate the Facilities covered by the franchise pursuant to this Ordinance.
- (c) Grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a franchise.
- (d) Any transfer or assignment of the franchise, or any part thereof, without prior approval of the Governing Body under this Section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.
- (e) The consent or approval of the Governing Body to any transfer of the franchise shall not constitute a waiver or release of the rights of the City in and to the Public Rights-of-Way.
- (f) Any transfer, shall by its terms, be expressly subordinate to the terms and conditions of a franchise.
- (g) In the absence of extraordinary circumstances, the City may not approve any transfer or assignment of a franchise prior to substantial completion of construction or reconstruction of a proposed Cable System.
- (h) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement.

Section 5.20 – Revocation or Termination of Franchise

A franchise granted by the City to use or occupy City Property or Public Rights-of-Way may be revoked for the following reasons:

- (a) Construction on City Property or in the Public Rights-of-Way at an unauthorized location.
- (b) Unauthorized sale, assignment or transfer of Grantee's franchise, or a substantial interest therein.
- (c) Misrepresentation of a material fact by Grantee or any of Grantee's officers, employees or agents in any application to the City.
- (d) Unauthorized abandonment of Facilities on City Property or in the Public Rights-of-Way.
- (e) Failure to relocate or remove Facilities or the failure to reimburse the City for the involuntary relocation or removal of Facilities as required in this Ordinance.

- (f) Failure to pay compensation, fees or costs when and as due the City.
- (g) Insolvency or bankruptcy of Grantee.
- (h) Violation of material provisions of this Ordinance.
- (i) Violation of the material terms of a franchise agreement.

Section 5.21 – Notice and Opportunity to Cure

In the event that the City Manager believes that grounds exist for revocation of a franchise, he or she shall give Grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing Grantee a reasonable period of time no less than thirty (30) days and not exceeding ninety (90) days to furnish evidence:

- (a) That corrective action has been taken, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (b) That rebuts the alleged violation or noncompliance.
- (c) That it would be in the public interest to impose some penalty or sanction less than revocation.

Section 5.22 – Hearing

In the event that Grantee fails to provide evidence reasonably satisfactory to the City Manager as provided in Section 5.21, the City Manager shall refer the apparent violation or non-compliance to the Governing Body. The Governing Body shall provide Grantee with notice and a reasonable opportunity to be heard concerning the matter.

Section 5.23 – Standards for Revocation or Lesser Sanctions

If persuaded that Grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the Governing Body shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (a) Whether the misconduct was egregious.
- (b) Whether substantial harm resulted.
- (c) Whether the violation was intentional.
- (d) Whether Grantee has a history of prior violations of the same or other requirements.

- (e) Grantee's history of overall compliance.
- (f) Whether Grantee voluntarily disclosed, admitted, or cured the violation or attempted to cure the violation.

Section 5.24 -- Foreclosure, Judicial Sale or Receivership

- (a) Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system:
 - (1) Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Ordinance governing the consent of the City to such change in control of a Grantee shall apply; or
 - (2) In such an instance, the City may serve notice of termination upon Grantee and, if applicable, the successful bidder at such sale. In such event, the franchise shall cease and terminate thirty (30) days after service of such notice unless:
 - (i) The City shall have approved the transfer of a franchise and a prospective Grantee, as and in the manner of this Ordinance provided; and
 - (ii) The successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the franchise.
- (b) The City shall have the right to revoke a franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 - (1) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and
 - (2) Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the Ordinance and franchise agreement and of the franchise granted to Grantee.

SECTION 6 CONSTRUCTION STANDARDS

Section 6.1 – General

No Person shall commence or continue with the construction, installation or operation of Facilities on City Property or within the Public Rights-of-Way except as provided in this Section.

Section 6.2 – Construction Codes

- (a) Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, State and local codes, rules and regulations including the National Electrical Safety Code.
- (b) So as to minimize public inconvenience, disruption or damages, all excavations and other construction in the Public Rights-of-Way shall be performed with the use of trenchless technology whenever possible and economically feasible.
- (c) When trenchless technology can not be used, trenches shall be required to comply with OSHA standards.

Section 6.3 – Construction Permits

- (a) No Person shall perform major construction work within the Public Rights-of-Way or on City Property without first obtaining a construction permit therefor, provided, however, no construction work whatsoever may be undertaken, nor shall a permit be issued for the construction or installation of Facilities on City Property or in the Public Rights-of-Way to provide Cable Service within the City unless a franchise has been applied for and received pursuant to Section 2 of this Ordinance.
- (b) As used in this Section, major construction work means any construction, installation, maintenance, repair, or other work activities on City Property or within the Public Rights-of-Way, the total estimated construction cost of which (excluding cost of plant) exceeds \$25,000 or any construction work under pavement.

Section 6.4 – Applications

- (a) Applications for permits to construct Facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
 - (1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
 - (2) The location and route of all Overhead Facilities to be installed, including separate identification of any new poles.

- (3) The location and route of all Underground Facilities, including the line and grade proposed for the burial at all points along the route which are within the Public Rights-of-Way.
 - (4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the Public Rights-of-Way along the underground route proposed by the applicant.
- (b) The City Manager or his or her designee may, in his or her discretion, require additional information to determine whether:
- (1) the construction methods to be employed will adequately protect existing structures, fixtures, and facilities within or adjacent to the Public Rights-of-Way.
 - (2) a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction is necessary.

Section 6.5 – Engineer’s Certification

The City may require that all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Section 6.6 – Traffic Control Plan

All construction permit applications which involve work on, in, under, across, or along any Public Rights-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

Section 6.7 – Issuance of Permit

Within ten (10) days after submission of all plans and documents required of the applicant under this Ordinance, the City Manager or his or her designee, if satisfied that the applications, plans and documents comply with all requirements of this Ordinance, shall issue a permit authorizing construction of the Facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem necessary or appropriate. In the event that Grantee has a specific service request from a customer and upon written application to the City Manager or his or her designee, the City Manager or his or her designee may expedite the issuance of the permit or may issue a conditional permit, allowing Grantee to commence work on a day requested prior to the expiration of 10 days after submission of the application. The application for an expedited permit or for a conditional permit shall include all information normally required by this Section for a permit, and shall be

supplemented by any additional information requested by the City Manager or his or her designee which would reasonably be calculated to support the granting of an expedited permit or conditional permit. The City Manager's approval, or that of his or her designee, will not be unreasonably withheld.

If, after the issuance of a permit, the City determines that the permit was issued incorrectly, an amended permit may be issued. Grantee must comply with the terms of the amended permit and is not released from this duty as a result of the original permit's being issued in error.

Section 6.8 – Construction Schedule

The permittee shall submit a written construction schedule to the City Manager or his or her designee five (5) working days before commencing any work in or about the Public Rights-of-Way. The permittee shall further notify the City Manager or his or her designee not less than two (2) working days in advance of any excavation or work in the Public Rights-of-Way.

Section 6.9 – Compliance with Permit

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the Facilities. The City Manager and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Section 6.10 – Display of Permit

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or his or her representatives at all times when construction work is occurring.

Section 6.11 – Survey of Underground Facilities

If the construction permit specifies the location of Facilities by depth, line, grade, proximity to other Facilities or other standard, the City Manager or his or her designee may require the permittee to provide written verification, if reasonably necessary, of the location of such Facilities by a registered surveyor. If requested by the City Manager or his or her designee, the permittee shall relocate any Facilities that are not located in compliance with permit requirements.

Section 6.12 – Noncomplying Work

Upon order of the City Manager or his or her designee, all work that does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Ordinance, shall be removed. Removal and replacement of substandard work will be performed prior to advancing the construction to the next phase.

Section 6.13 – Completion of Construction

The permittee shall promptly complete all construction activities so as to minimize disruption of the Public Rights-of-Way and other public and private property. All construction work authorized by a permit within Public Rights-of-Way, including restoration, must be completed within one hundred and twenty (120) days of the date of issuance, or by such other date as may be agreed upon by the City Manager or his or her designee.

Section 6.14 – As-Built Drawings

Within sixty (60) days after completion of construction, the permittee shall furnish the City with a complete set of strand maps, certifying to the City that they accurately depict the location of all Facilities in the Public Rights-of-Way or on City Property constructed pursuant to the permit.

Section 6.15 – Restoration of Improvements

Upon completion of any construction work, the permittee shall promptly repair or restore any and all Public Rights-of-Way, including any and all public and private fixtures, structures and Facilities therein, and staging or stockpile areas, to as good or better a condition as before the start of construction and in compliance with City standards.

Section 6.16 – Landscape Restoration

- (a) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of Facilities, shall be replaced or restored as nearly as may be practicable, to at least as good condition than prior to performance of work.
- (b) All restoration work within the Public Rights-of-Way shall be done in accordance with landscape plans approved by the City Manager or his or her designee.

Section 6.17 – Construction Surety

Prior to issuance of a construction permit, the permittee shall provide a performance and/or payment bond, as provided in Section 5.17 of this Ordinance.

Section 6.18 – Responsibility of Owner

The owner of the Facilities to be constructed and, if different, Grantee, are responsible for performance of and compliance with all provisions of this Section.