

Chapter 13.50
CABLE SERVICES CODE

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ARTICLE I. GENERAL PROVISIONS

13.50.010 Title.

This Ordinance may be referred to and cited as the "Cable Services Code" or herein as the "Code" of the City of Overland Park, Kansas.

(History: Ord. CaSC-2293 §1, 2001)

13.50.020 Applicability.

The requirements of this Code shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Code shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Code shall be deemed incorporated in each Cable Franchise granted. Nothing in this Code or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid Cable Franchise or contract during the term thereof, whether entered into before or after enactment of this Code, and shall impose obligations on any such Person additional to those included in such Franchise or contract only to the extent permitted by law and to the extent not inconsistent with such Franchise or contract; provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing Cable Franchise. The provisions of this Code shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid Cable Franchise.

(History: Ord. CaSC-2293 §1, 2001)

13.50.030 Preservation of Police Power Authority.

To the extent not inconsistent with Code Section 13.50.110(e), any rights granted pursuant to this Code and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisees shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Code shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to any provisions of the Code or as to actions of the parties under applicable federal law, including 47 U.S.C. 555A, as well as applicable, state, or local law currently in effect or as may hereinafter be amended.

(History: Ord. CaSC-2293 §1, 2001)

13.50.040 Public Inspection of Records.

Certain information required to be filed with the City pursuant to this Code is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. The City shall provide a Franchisee with notice of any request by a third party for information designated as proprietary. Nothing in this Code or a Franchise shall be construed as a waiver of the provisions of K.S.A. 45-221(18).

(History: Ord. CaSC-2293 §1, 2001)

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13.50.050 Indemnification.

As a condition of use of the Rights-of-Way, Franchisees at their sole cost and expense, shall indemnify, protect, defend (with legal counsel representing the City that is acceptable to the City, such approval not to be unreasonably withheld) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under the Franchise or use of the Rights-of-Way, or otherwise, to the extent caused by the Franchisee. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of two (2) years after the effective date of expiration or termination. (History: Ord. CaSC-2293 §1, 2001)

13.50.060 No Cause of Action for Damages Against the City.

The Franchisee shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the Franchise therein granted; provided that said Franchisee expressly acknowledges that it accepted the rights therein granted in reliance upon its independent and personal investigation and understanding of the power and authority of said City to enter into the Franchise authorized therein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Franchisee acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and of its Franchise and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions. (History: Ord. CaSC-2293 §1, 2001)

13.50.070 Compliance With Laws.

To the extent not inconsistent with Code Section 13.50.110(e), in performing activities and exercising its rights and obligations under any Franchise, Franchisees shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property. (History: Ord. CaSC-2293 §1, 2001)

13.50.080 Enforcement; Attorneys' Fees.

The City shall be entitled to enforce this Code and any Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the material terms of this Code or any Franchise. (History: Ord. CaSC-2293 §1, 2001)

13.50.090 Relationship of the Parties.

Under no circumstances shall any Franchise authorized by this Code be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

(History: Ord. CaSC-2293 §1, 2001)

13.50.100 Defined Terms.

For purposes of this Code, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. **"Access Facilities"** means:
 1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and
 2. The facilities and equipment for the use of such channel capacity.
- B. **"Affiliate"** means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.
- C. **"Basic Cable Service"** means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).
- D. **"Cable Act"** means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.
- E. **"Cable Franchise"** means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.
- F. **"Cable Franchisee"** means a Person who is granted a Cable Franchise to construct, operate or maintain Cable Facilities or provides Cable Services by use of the Rights-of-Way, and that Person's agents, employees, lawful successors, transferees, or assignees.

- G. **"Cable Franchise Fee"** means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Franchisee or its Cable Subscribers, or both, solely because of their status as such, pursuant to this Code. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Cable Franchisee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- H. **"Cable Services" or "Services"** means:
1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
 2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;
- I. **"Cable Internet Services"** means the offering of direct access by a Cable System to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Code, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Cable Franchise. Pending any legally binding determination to the contrary, all payments made to the City prior to the date of such determination attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use of the City's Rights-of-Way.
- J. **"Cable System" or "System"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:
1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
 2. A facility that serves Subscribers without using any public Rights-of-Way; or
 3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or
 5. Any facility of any electric utility used solely for operating its electric utility system.
- K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.
- L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.
- M. "**City**" or "**Grantor**" means the City of Overland Park, Kansas.
- N. "**Code**" means this "Cable Services Code" and all provisions herein established by this Ordinance.
- O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).
- P. "**Complaint**" means any oral, written or electronic, allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is not in compliance with its Franchise or this Code.
- Q. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.
- R. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Franchisee in meeting an obligation under its Franchise which the Franchisee would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.
- S. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.
- T. "**Facilities**" means any portion of a Cable or OVS System located in, along, over, upon, under, or through the Rights-of-Way.
- U. "**Franchise Area**" unless otherwise specified in the applicable Franchise, as provided for in 13.50.140.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

- V. **"Gross Revenues"** means any revenue actually received by a Cable Franchisee, or by any other entity that is a Cable Operator on a Cable Franchisee's Cable System including the Cable Franchisee's Affiliates, from the operation of the Cable Franchisee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (unless it is conclusively determined that such revenues may not be legally included as Cable Services); all Cable Service lease payments from the Cable System; payments or other consideration received by the Cable Franchisee from programmers for the carriage of programming, including home shopping channels, except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Cable Franchisee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Cable Franchisee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Cable Franchisee's ability to pass through franchise related costs to the extent allowed by applicable law; (iii) any taxes on Cable Services furnished by Cable Franchisee which are imposed directly upon any Subscriber or user by the State, City, or other governmental unit and which are collected by Cable Franchisee on behalf of said governmental unit; (iv) Franchise Fees collected from Subscribers, or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for public interest community events or are payments for advertising or promotions which are contractually required by said programmers.
- W. **"Institutional Network" or "I-Net"** means a communication network which is constructed or operated by Cable Franchisee and which is generally available only to Institutional Users. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

- X. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.
- Y. "**Institutional Users**" means governmental, educational, and other non-profit publicly funded users delineated in the individual Cable Franchise, as may be amended from time to time with the consent of the Cable Franchisee.
- Z. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.
- AA. "**Normal Operating Conditions**" means those Cable Services offered and controlled by the Cable Franchisee or those conditions that are within the control of a Cable Franchisee. Those conditions which are ordinarily within the control of Cable Franchisee include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Cable Franchisee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.
- BB. "**Open Video Services**" or "**OVS**" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- CC. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.
- DD. "**Public Building**" means any building identified in the applicable Franchise which is owned or for the greater part occupied by the City or on behalf of the City by other governmental units performing traditional municipal governmental functions.
- EE. "**Renewal**" means a new Cable Franchise granted to an existing Franchisee.
- FF. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Cable Franchisee on order of the Federal Communications Commission, State or City. To the extent permitted by applicable law, the City shall maintain such information as confidential to the extent that the Franchisee identifies specific information as such.
- GG. "**Rights-of-Way**" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as otherwise provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal office building property or public works facilities.

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- HH. "**ROW Ordinance**" means "An Ordinance for Managing the Use and Occupancy of Public Right-of-Way for the City of Overland Park, Kansas," adopted as Ordinance No. RW-2184 that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.
- II. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.
- JJ. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.
- KK. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Cable Franchisee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Cable Franchisee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Code or Franchise.
- LL. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the United States Code.
- MM. "**Trained Representative**" means employees of a Cable Franchisee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.
- (History: Ord. CaSC-2293 §1, 2001)

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ARTICLE II. CABLE SERVICES FRANCHISE REQUIREMENTS**13.50.110 Cable Franchise Requirements.**

- A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless applicable federal or State law prohibits the City's enforcement of such a requirement. Any such Person shall be subject to a fine of \$500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Code to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Cable Franchisee who has properly asserted its intent and is pursuing renewal of the Franchise pursuant to 47 USC § 546.
- B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Cable Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. To the extent not inconsistent with Code Section 13.50.110(e), all Franchises shall be deemed to incorporate and be limited by the provisions of this Code and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of communications services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- C. **Franchise Not Exclusive.**
1. Any Cable Franchise granted by the City shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Code and applicable federal and state law.
 2. The terms and conditions of any Cable Franchises granted or renewed after the effective date of this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed subject to this Ordinance, when taking into consideration, where reasonably

warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection 13.50.110.C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.
4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in its Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.** Every Cable Franchise shall apply to the entire territorial area of the City, as it exists now or may later be configured.

E. **Federal, State, and City Jurisdiction.**

1. This Chapter and Code shall be construed in a manner consistent with all applicable federal and state laws.
2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent not inconsistent with applicable law and the reasonable exercise of the City's police powers.
3. The provisions of this Chapter and Code shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Code shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise or applicable law. A Cable Franchise, whether entered into before or after the enactment of this Code, (including all of Cable Franchisee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Cable Franchisee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Cable Franchisee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Code, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Code, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.
- F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.
- G. **Consideration of Initial Applications.** Upon receipt of any application for an initial Franchise, the designated City official shall prepare a report and make his or her recommendations respecting such application to the City Council.
- H. **Franchise Renewal.** Cable Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Cable Franchisee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.
- I. **Grant of Additional Franchise and Competing Service.** The City may issue, pursuant to K.S.A. 12-2007, a competing Cable Franchise in the City. The Governing Body of the City shall order publication of a notice in *The Overland Park Sun* of a hearing to afford the public in the Franchise Area, including other Rights-of-Way users, as well as the public at large, an opportunity to comment on the proposed Franchise Ordinance, a copy of which shall be on file in the office of the City Clerk. In considering whether to grant one or more additional Franchises, the City may consider the following issues:
1. The positive and/or negative impact of an additional Cable Franchise on the community.
 2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Franchisee. The purpose of this subsection is to ensure that any competition which may occur among Cable Franchisees will be on terms which when taken as a whole do not give a competitive advantage to one Cable Franchisee over another.
 3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.
 4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Cable Franchisee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.
 5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

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6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.
 7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.
 8. The disruption of the availability of Cable Service within the City.
 9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.
- J. **Permits for Non-Franchised Entities.** The City may issue a license to a Person other than the Cable Franchisee to permit that Person to traverse any portion of a Cable Franchisee's Cable Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Cable Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

(History: Ord. CaSC-2293 §1, 2001)

13.50.120 Design, Services and Capabilities.

- A. **Cable System Design.** Every Cable Franchisee shall offer Cable Service that meets the cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Cable Franchisee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Cable Franchisee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.
- B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.
- C. **Drops To Public Buildings.**
1. Every Cable Franchisee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200 foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Cable Franchisee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Cable Franchisee at the cost of Cable

Franchisee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Cable Franchisee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Cable Franchisee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Cable Franchisee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.
 3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Cable Franchisee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.
- D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service by the Cable Franchisee within the Franchise Area, such Cable Franchisee shall provide upon written request one courtesy cable modem with Cable Internet Service without charge to every State accredited K-12 public school and public library in the Franchise Area, where the Drop does not exceed 200 feet, which may constitute an element of an individual Franchise I-Net requirement.
- E. **Use of Cable Franchisee's Facilities.** Subject to any applicable state or federal regulations, the City shall have the right to install and maintain, upon the poles and within the underground pipes and conduits of a Cable Franchisee, any wires and fixtures desired by the City for public purposes. The specific terms and conditions of such access shall be set out in the individual Cable Franchise Agreement. Provided, however, that (a) such use by Grantor shall not interfere with the current or future use by Cable Franchisee or any pre-existing user or lessor of Grantee's facilities; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Cable Franchisee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, and/or signal systems, but not for commercial Cable System purposes in competition with the Cable Franchisee.
- F. **Upgrade of System.** Every Cable Franchisee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.
- G. **Emergency Alert Capability.** Every Cable Franchisee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that if the FCC at some future date eliminates the current regulations the City and Cable Franchisee shall mutually agree upon the applicable standard on a going forward basis.

- H. **Periodic Review.** The Cable Franchise shall include provisions to provide for a "periodic review" between the City and a Cable Franchisee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Cable Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.
- I. **Closed Captioning and Descriptive Audio Service.** Every Cable Franchisee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.
- J. **Standby Power.** Within twelve (12) months of activation of the System, the Cable Franchisee shall provide standby power generating capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Cable Franchisee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.
- K. **Status Monitoring.** Every Cable Franchisee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.
- L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

(History: Ord. CaSC-2293 §1, 2001)

13.50.130 Institutional Network, And Public Educational And Governmental Access Or "PEG Access".

- A. **Institutional Network, Access Channels.**
 - 1. Every Cable Franchisee shall, to the extent required in its Franchise and subject to applicable law, provide or fund an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by Institutional users. Such obligations shall be comparable to support, when taken as a whole, provided by other existing Cable providers within the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.
 - 2. Every Cable Franchisee shall also provide channel capacity and support for Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Code, absent the express written consent of the City, Cable Franchisee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

- B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, results of proof of performance testing as required by applicable federal law throughout the System and on all required Channels will be made available to the City upon request to the extent required in a Franchise. Every Cable Franchisee will monitor the Cable System to determine and ensure that the level of technical quality of the System's transmission of Access Channels is in conformance with FCC Rules and is the same as on other Channels transmitted on the Cable System.

(History: Ord. CaSC-2293 §1, 2001)

13.50.140 Technical Standards and Customer Service Practices.

- A. **General Technical Standards and Customer Service Practices.**
1. To the extent set forth herein this Code incorporates Cable Service technical standards and establishes customer service practices that every Cable Franchisee must satisfy.
 2. Every Cable Franchisee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Cable Franchisee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.
- B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Cable Franchisee shall be required to indicate what corrective measures have been taken and shall have the site retested.
- C. **Cable System Office Hours and Telephone Availability.**
1. Every Cable Franchisee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Cable Franchisee and its services. Such service center shall be open at least during Normal Business Hours. Cable Franchisee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.
 2. Every Cable Franchisee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.
 3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

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4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.
 5. Under Normal Operating Conditions, a Cable Franchisee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.
 6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:
1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.
 2. The appointment window alternatives for installations, service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Cable Franchisee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.
 3. A Cable Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
 4. If a Cable Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.
- E. **Repairs and Interruptions.**
1. Under Normal Operating Conditions and excluding conditions beyond the control of a Cable Franchisee, every Cable Franchisee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Cable Franchisee must begin actions to correct other service problems on the business day following notification of such service problems.
 2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.
 3. Work on service problems, excluding conditions beyond the control of a Cable Franchisee, must begin by the next business day after notification of the problem.
 4. Outside repairs to cable plant which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within the next business day after the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Cable Franchisee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Cable Franchisee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Cable Franchisee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.
6. Upon Subscriber request a Cable Franchisee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.
7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.
8. No charge shall be made to a Subscriber for any service call relating to Cable Franchisee owned and Cable Franchisee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Cable Franchisee to have been:
 - a. Caused by the negligence, malicious destruction, illegal tampering, or theft of Cable Service or of cable equipment by the Subscriber; or
 - b. A problem established as having been non-Cable System or Cable Service in origin.

A Cable Franchisee may also assess a service charge for service calls in instances where the problem was not caused by the Cable Franchisee.
9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Cable Franchisee's Cable System that are located underground, shall be placed in such locations pursuant to City Code, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Cable Franchisee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time within the City, except for the express purpose of being immediately connected to the Cable System of Cable Franchisee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Cable Franchisee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Cable Franchisee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Cable Franchisee shall not disconnect. Provided, however, that this Section does not apply to Subscribers disconnected as a result of insufficient funds.
2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in subsection 13.50.140.F.1 above shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.
3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.
4. No Subscriber may be disconnected due to a Cable Franchisee's failure to timely or correctly post payments.
5. Unless requested by the Subscriber, no disconnection requiring a cable service representative on site at a Subscriber's premises may be disconnected outside of Normal Business Hours or on Sundays or holidays.
6. Absent extenuating circumstances, a Cable Franchisee is not required to reconnect a Subscriber with an undisputed outstanding balance.
7. A Cable Franchisee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.
8. A Cable Franchisee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Cable Franchisee may effectuate such disconnection without advance notice, provided that a Cable Franchisee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Cable Franchisee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Cable Franchisee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.
9. Subscribers may request disconnection or a downgrade of cable service at any time. A Cable Franchisee may not impose any charge for service delivered after the requested date of disconnection. Notwithstanding the foregoing, a Cable Franchisee may impose a charge for service delivered after the requested date of disconnection if the terms and conditions of subscribing to such service were clearly disclosed to the Subscriber at the time of subscription. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Code shall limit the right of a Cable Franchisee to reasonably deny Cable Service to any household or individual which has a negative credit or cable service history with the Cable Franchisee or another Person as verified by a credit reporting agency, which may include non-payment of bills, theft or damage to the Cable Franchisee's or other Person's equipment, outstanding balances, or threats or assaults on employees of the Cable Franchisee in the course of their employment.

G. **Communications Between Cable Franchisee and Subscribers.**

1. **Notifications to Subscribers:**

- a. Every Cable Franchisee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:
 - i. Product and Services offered;
 - ii. Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.
 - iii. Installation and service maintenance policies;
 - iv. Instructions on how to use Services;
 - v. Channel positions of programming offered on a System; and
 - vi. Billing and Complaint procedures, including the name, address and telephone number of the City.
- b. Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Cable Franchisee. All such notices shall be provided in writing by any reasonable means. In addition, the Cable Franchisee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this Section. Notwithstanding the foregoing or any provision of this Code to the contrary, a Cable Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Cable Franchisee and the Subscriber.

2. **Billing.**

- a. Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.
- b. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- c. In case of a billing dispute, a Cable Franchisee must respond to a written Complaint from a Subscriber within thirty (30) calendar days.
- d. Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Cable Franchisee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:
 - a. At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:
 - i. The date after which the fee will be imposed if the balance is not paid; and
 - ii. The amount of the fee that will be imposed; and
 - b. The Fee for the delinquent payment shall not exceed the state statutory maximum as may be amended from time-to time.
 4. **Credits and Refunds.** Credit or refund checks will be issued promptly, but no later than either:
 - a. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - b. The return of equipment supplied by the Cable Franchisee if Cable Services are terminated.
- H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Cable Franchisee shall prepare as necessary and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a periodic written summary of the type of Complaint(s) and where appropriate their resolution. Such Complaint logs and summaries shall be on file at the office of Cable Franchisee for three (3) years, and available for inspection by the City upon request.
- I. **Parental Control.** Every Cable Franchisee shall make available to any Subscriber upon request a "lockout" device, which may be included within the Converter, for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Cable Franchisee may, however, require a reasonable security deposit for the use of such a device.
- J. **Service Area.**
1. A Cable Franchisee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion, or economic condition. A Cable Franchisee shall serve all areas of the City with populations of at least ten (10) dwelling units per one quarter (1/4) aerial cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where a franchise is granted to a prior existing Cable operator located in an area annexed subsequent to the adoption of this Code, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Special Agreements.** Nothing herein shall be construed to prevent a Cable Franchisee from serving areas not covered under this section upon agreement with developers, property owners or residents.

- K. **Customer Service Reporting Requirements.** The City may require upon reasonable request that a Cable Franchisee periodically furnish to City semi-annual reports and any other reasonable information relevant to the Cable Franchisee's compliance with the customer Service requirements of this Chapter measured on a quarterly basis to the extent that the Cable Franchisee maintains such reports and information.

(History: Ord. CaSC-2293 §1, 2001)

13.50.150 Operation and Maintenance.

- A. **Open Books and Records.** Every Cable Franchisee shall cooperate with the City with respect to City's administration of this Code and any applicable Franchise subject to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, certified financial statements, service complaint logs, performance test results, and other existing like materials of a Cable Franchisee that relate and are material to the operation of the Cable Franchisee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Code or the Cable Franchisee's Franchise. A Cable Franchisee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Cable Franchisee as confidential to the extent permissible under state and federal law and will advise said Cable Franchisee of any third-party requests for such information so that Franchisee may take appropriate and authorized steps to protect its rights. All such review of a Cable Franchisee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.
- B. **Communications with Regulatory Agencies.** Copies of all non-confidential petitions, applications, communications, and reports submitted by a Cable Franchisee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Cable Franchisee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.
- C. **Annual Reports.**
1. Upon request, a Cable Franchisee shall make available to City, within ninety (90) days of the end of each of the applicable Cable Franchisee's fiscal years during the term of this Franchise, the following:
 - a. A revenue statement certified by a representative of the Cable Franchisee showing the Gross Revenues of the Cable Franchisee for the preceding fiscal year;

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- b. A current list of names and addresses of each officer and director and other management personnel of the Cable Franchisee;
- c. A statement of the Cable Franchisee's current billing practices and charges;
- d. A copy, if any, of the Cable Franchisee's current Subscriber Service contract; and
- e. A copy of Annual Reports to stockholders, if any, for operating company and parent company.
- f. An index of all technical and operational reports that Franchisee is required to develop and maintain in its public file with respect to its Cable System pursuant to federal law.

Other than subsection (f), all of the above information shall not be required annually unless there is a change after the first filing.

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Cable Franchisee that are reasonably necessary for the enforcement of a Franchise. A Cable Franchisee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Cable Franchisee if the audit reveals an underpayment of five percent (5%) or more.
3. Any review or audit of a Cable Franchisee's books and records shall be performed by an independent party if the City itself enters into business as a competitor to a Cable Franchisee. In such case, all confidential information obtained during the audit shall not be disclosed to the City or any other party.

D. **Service Contract and Subscriber Information.**

1. A Cable Franchisee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Cable Franchisee to exercise its rights and perform its obligations under this Chapter and its Cable Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Code, federal, state and/or local law, or any applicable rules and regulations.
2. Upon request, a Cable Franchisee shall submit to City any standard residential Subscriber contract form that it utilizes. If no written contract exists, a Cable Franchisee shall file with the City a document completely and concisely stating the terms of the standard residential Subscriber contract offered.

(History: Ord. CaSC-2293 §1, 2001)

13.50.160 Financial Provisions, Remedies, Procedures and Due Process.**A. Annual Cable Franchise Fee.**

1. As compensation for grant of a Cable Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Cable Franchise obligations, every Cable Franchisee shall pay to the City on an annual basis throughout the term of its Cable Franchise, a sum totaling five percent (5%) of the Cable Franchisee's Gross Revenues.
2. Further, every Cable Franchisee that offers any "bundled" services shall fairly reflect as part of its calculation of applicable Franchise Fees an appropriate and reasonable division of services among the various services offered. The specific cost accounting for such revenue attribution shall be set out in the individual Franchise or other agreement.
3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Cable Franchisee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Cable Franchisee's System.
4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Cable Franchisee or by audit as permitted by this Chapter, the Cable Franchisee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.
5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Cable Franchisee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.
6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Code or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Cable Franchisee's obligations to retain records related to the Cable Franchise Fee audit, shall expire six (6) years from the date on which each Cable Franchise Fee payment by the Cable Franchisee is due.

- B. Security Fund.** Each Cable Franchisee may be required to maintain a security fund with the City to ensure compliance with this Code and applicable Franchise, in an amount and in a manner as set forth in the Cable Franchisee's Franchise.

- C. **Bonds, Indemnification, and Insurance.** Each Cable Franchisee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Cable Franchisee's Franchise, and as required by the ROW Code. Each Cable Franchisee also shall be required to indemnify the City in a manner as set forth in Article 1 and in the Cable Franchisee's Franchise.
- D. **Remedies and Enforcement Procedure.**
1. Whenever the City has reason to believe that a Cable Franchisee has violated any material provision of this Code or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Cable Franchisee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Cable Franchisee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Cable Franchisee fails to correct the violation within the time prescribed, or if the Cable Franchisee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Cable Franchisee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Code or Cable Franchise violations, including those in which grounds for revocation are considered.
 2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render written findings and a written decision based upon the evidence.
 3. In the event the Cable Franchisee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.
 4. In the event that a violation exists and that the Cable Franchisee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the security fund, as follows:
 - a. For system construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, \$500 per day of non-compliance;
 - b. For all other violations, \$250 per day per violation.The City shall provide the Cable Franchisee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.
 5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Cable Franchisee remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Cable Franchisee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Cable Franchisee.
 7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Code, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.
 8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.
- E. **Grounds for Revocation.** In addition to any rights in this Code or applicable Franchise, the City reserves the right to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur, and the City and a Cable Franchisee are not able to mutually agree upon a cure or alternate remedy:
1. The Cable Franchisee substantially violates any material provision of this Code or its Franchise;
 2. The Cable Franchisee practices an act of fraud or deceit upon the City; or
 3. The Cable Franchisee becomes insolvent or is adjudged bankrupt.
 4. In revoking a Franchise the City shall utilize the enforcement procedures set forth in subsection 13.50.160.D. above.
- F. **Right of Appeal.**
1. Upon the imposition of a penalty or revocation decision, a Cable Franchisee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.
 2. During any such appeal period, the Cable Franchise shall remain in full force and effect.

(History: Ord. CaSC-2293 §1, 2001)

13.50.170 Foreclosure, Receivership and Abandonment.

- A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Cable Franchisee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Cable Franchisee has taken place, and the provisions of this Code governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.
- B. **Receivership.** The City shall have the right to cancel a Cable Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Cable Franchisee, 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:

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1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Cable Franchise and remedied all defaults thereunder; and
2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Code and applicable Cable Franchise.

(History: Ord. CaSC-2293 §1, 2001)

13.50.180 Purchase of System.

If a renewal or extension of a Cable Franchise is denied without further right of appeal, or a Cable Franchise is lawfully terminated, with all rights of appeal exhausted, the City may acquire ownership of the Cable System or effect a transfer of ownership of the Cable System to another Person, any such acquisition or transfer shall in accordance with and to the extent permitted by 47 U.S.C. § 547 as it exists now or may be amended.

(History: Ord. CaSC-2293 §1, 2001)

13.50.190 Sale or Transfer of Cable Franchise.

- A. A Cable Franchisee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Cable Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Cable Franchise. This Section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Cable Franchisee.
- B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Cable Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Cable Franchisee's Cable System assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Cable Franchisee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Cable Franchisee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Cable Franchisee so as to create a new controlling interest in a Cable Franchisee; and (iv) a Cable Franchisee's agreement to transfer management or operation of the Cable Franchisee or the System to an unaffiliated entity so as to create a new controlling interest in the Cable Franchisee. The term "controlling interest" as used herein means majority equity ownership of a Cable Franchisee.

- C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Cable Franchisee's assets, including, but not limited to, the Cable Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Cable Franchise or Cable System and thus shall not require compliance with this section.
- D. In the case of any sale or transfer of ownership of an interest in or control of a Cable Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Code. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.
- E. The City reserves any legal right it has under applicable law to require a Cable Franchisee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Cable Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees.

(History: Ord. CaSC-2293 §1, 2001)

13.50.200 Rights Of Individuals Protected.

- A. **Discriminatory Practices Prohibited.** A Cable Franchisee shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of income level, race, color, religion, national origin, sex, or age. Every Cable Franchisee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Every Cable Franchisee shall comply at all times with all other applicable federal, State, and local laws, and all executive and administrative orders relating to non-discrimination.
- B. **Subscriber Privacy.** Every Cable Franchisee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

(History: Ord.CaSC-2293 §1, 2001)

13.50.210 Miscellaneous Provisions.

- A. **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Cable Franchisee shall be subject to the rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

- B. **Rights Reserved to Grantor.** Upon either final non-appealable determination of non-renewal or revocation of a Cable Franchise, Grantor shall have discretion to permit a Cable Franchisee by mutual consent to continue to operate the Cable System for an extended period of time agreed upon by the parties. Any such operation of the System by a Cable Franchisee shall be in accordance with the terms and conditions of this Code and the Cable Franchise, and shall provide the regular Subscriber service and any and all of the services that may be provided at that time.

(History: Ord. CaSC-2293 §1, 2001)

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ARTICLE III RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

13.50.220 Rights-of-Way Ordinance.

To the extent not inconsistent with Code Section 13.50.110(e), a Franchisee shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Code shall be deemed a condition of any Franchise. The provisions of this Article 3 shall apply as provided herein to Franchisees, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

(History: Ord. CaSC-2293 §1, 2001)

13.50.230 Exclusion of Certain Locations/Facilities.

Prior to its installation of any Facilities in the Rights-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations or facilities in the Rights-of-Way to be excluded from use by Franchisee for its Facilities, including, but not limited to, ornamental or similar specially-designed street lights, or other facilities or locations which, in the reasonable judgment of the City Engineer do not have electrical service adequate or appropriate for the Franchisee's Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Franchisee due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City Engineer. In the event such exclusions conflict with the reasonable requirements of the Franchisee, the City will cooperate in good faith with Franchisee to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for Franchisee. All such determinations shall be in writing and appealable to the City Manager as provided in the ROW Ordinance.

(History: Ord. CaSC-2293 §1, 2001)

13.50.240 Location of Facilities Subject to Approval.

The location of all Facilities shall be subject to the reasonable review of the City Engineer. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant to the City's ROW Ordinance, and other applicable permitting/zoning requirements shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. The City shall work with the Franchisee to identify possible alternate locations for placement of such facilities. Unless specifically authorized herein or otherwise by the City, antennae or antennae structures having a height of forty (40) feet or greater located on the Rights-of-Way, or any antennae on other City owned or controlled property, shall not be authorized by a Franchise, but shall require a separate Lease or Use agreement with the City. Antennae shall be permitted pursuant to a Franchise only on existing

structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Engineer may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

(History: Ord. CaSC-2293 §1, 2001)

13.50.250 Erection of Poles Prohibited.

Franchisee shall not erect, for any reason, any pole on or along any Rights-of-Way in an existing aerial utility system where poles are otherwise available on terms and conditions that are reasonable under applicable FCC or KCC standards, not including authorized service drop poles. Franchisee may obtain the lease of pole space and facilities from the existing utility pole owners. If additional poles in an existing aerial route are required, Franchisee may negotiate with the utility for the installation of the needed poles, provided, however, that Franchisee may not install its facilities on any such utility facility if the utility has not obtained all requisite authorizations from the City.

(History: Ord. CaSC-2293 §1, 2001)

13.50.260 Facilities Requirements; Planned Infrastructure.

- A. Prior to constructing any new or additional conduit within a high density corridor, as currently designated by the City Engineer, Franchisee shall make a good faith effort to ascertain whether existing or planned conduit exists that the Franchisee could reasonably utilize to meet its needs. Provided, however, if during the term of this Franchise the City adopts a generally applicable ordinance requiring all users of the Rights-of-Way to provide mapping of reserve conduit that prior to constructing any new conduit Franchisee will be required to certify in writing to the City Engineer that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Rights-of-Way as to the availability of existing or planned conduit that the Franchisee could reasonably utilize to meet its needs, and that no such conduit is available or planned within the near future at a reasonable cost.
- B. Upon a determination that no such conduit is available, Franchisee may install new conduit pursuant to the following requirements:
 - 1. Unless otherwise provided under the rules and policies adopted pursuant to of the ROW Ordinance, a Franchisee shall provide written notification of the proposed construction activity to all existing utilities, Franchisees, and other known service providers who shall have twenty-one (21) days from the receipt of such notification to indicate in writing to the City and the Franchisee as to whether they desire to jointly undertake the construction of such conduit or otherwise co-locate their facilities at such time. Any utility or Franchise holder electing to jointly construct or co-locate its facilities with that of Franchisee shall share in the pro-rata costs of such construction or co-location of facilities reasonably incurred by Franchisee and shall participate in the project on reasonably the same time schedule established by the Franchisee unless opposed by the City. The City Engineer will work with Franchisee in developing the process for these notification requirements.

2. When a Franchisee installs any new trench and/or conduit within a designated high-density corridor, the Franchisee shall at the request of the City Engineer to enable collocation by City or other entities, install sufficient additional space and/or conduit or other related facilities (“Excess Conduit”) to meet the City’s planned infrastructure needs and needs of other entities planning development of facilities in the area. Such Excess Conduit, unless otherwise mutually agreed in writing, shall be owned by the City, and the City shall reimburse the Franchisee in the amount of the incremental cost of the labor and material of installing the excess conduit simultaneous with the Franchisee’s conduit. Such reimbursements are subject to review and approval by the City, and unless otherwise agreed to by the City, shall be paid in the form of credits or offsets to Franchise Fees due the City from Franchisee, taking into account the time value of money, distributed to Franchisee over not more than 60 equal monthly credits. The specific payment mechanisms will be set out in the Franchise Agreement or other separate agreement. In no event shall such monthly credit ever exceed the Franchise Fee due. If the City and Franchisee agree to alternative terms in which the Franchisee retains ownership of the excess conduit, the Franchisee shall be obligated to make such conduit and/or trench space available to any other user of the Rights of Way on a nondiscriminatory and competitively neutral basis at not more than the *pro rata* cost of that portion of the Excess Conduit, determined by the total labor and material cost of all Facilities at that location, plus interest at the prevailing market rate. Neither Franchisee nor its Affiliates shall be entitled to use such Excess Conduit owned by Franchisee without notice to and consent of the City Engineer on a determination that such conduit is not needed for current or future use by other Franchisees. All City use of the Excess Conduit shall be at no additional cost to the City. In the event the City leases or sells Excess Conduit acquired pursuant to this subsection to any third party, it shall require payment of at a minimum the *pro rata* cost of the Excess Conduit.
3. Such requirements or policies as may be adopted by the City to implement these provisions shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and to minimize the total number of excavations and cost of total communications infrastructure installation.

(History: Ord. CaSC-2293 §1, 2001)

13.50.270 Use of Facilities by Others; Required Terms.

If any Franchisee chooses to make its poles and or conduits physically available for use by any other Person it shall do so only under terms that are fair and reasonable.

(History: Ord. CaSC-2293 §1, 2001)

13.50.280 Removal and Relocation of Facilities.

Facilities shall be removed or relocated on request of the City at Franchisees’ cost as may be more specifically provided in the ROW Ordinance.

(History: Ord. CaSC-2293 §1, 2001)

13.50.290 Franchisee Responsible for Costs.

To the extent consistent with the federal Cable Act, the Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with Franchisee's installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Ordinance. Such costs shall not include costs related to the administration of the franchise nor inspection, compliance or enforcement actions on the part of the City. All costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

(History: Ord. CaSC-2293 §1, 2001)

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ARTICLE IV. MISCELLANEOUS

13.50.300 Administration of Franchise.

The City shall be responsible for the continued administration of this Code and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

(History: Ord. CaSC-2293 §1, 2001)

13.50.310 Non-Enforcement by the City.

A Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Code or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

(History: Ord. CaSC-2293 §1, 2001)

13.50.320 Publication of Notices.

All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Franchisee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

(History: Ord. CaSC-2293 §1, 2001)

13.50.330 Severability.

If any material section of this Code or of any franchise granted subject to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Code, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.

(History: Ord. CaSC-2293 §1, 2001)

13.50.340 Force Majeure.

Each and every provision hereof shall be subject to the acts of God, fire, strikes, riots, floods, war and other circumstances beyond the Franchisee's or the City's control.

(History: Ord. CaSC-2293 §1, 2001)

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