

**RESOLUTION NO. 04-31**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF MARICOPA, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE CITY OF MARICOPA CABLE TELEVISION CODE," RELATING TO THE ESTABLISHMENT OF PROCEDURES FOR THE GRANTING OF CABLE TELEVISION LICENSES AND REGULATION OF CABLE SYSTEMS, BY AND WITHIN THE CITY OF MARICOPA**

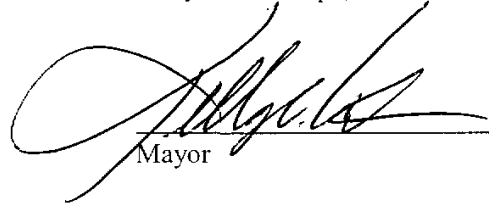
**WHEREAS**, staff for the City has developed a comprehensive Code relating to the establishment of procedures for the granting of cable television licenses and regulation of cable systems within the *City of Maricopa*;

**WHEREAS**, the Council believes that declaring such document a public record and adopting its provisions by reference will be in the City's best interests;

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Common Council of the City of Maricopa, Arizona as follows:

That certain document known as "**THE CITY OF MARICOPA CABLE TELEVISION CODE**" relating to the establishment of procedures and regulations for the granting of cable television licenses, is hereby declared to be a public record, and three (3) copies shall remain on file in the office of the City Clerk of the City of Maricopa for examination by the public.

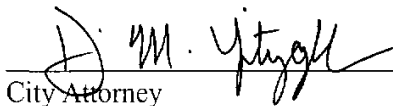
**PASSED AND ADOPTED** by the City Council of the City of Maricopa, Arizona this 21<sup>st</sup> day of September, 2004.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

***CITY OF MARICOPA***

***Cable Television Code***

# CITY OF MARICOPA CABLE TELEVISION CODE

## Article 1 DEFINITIONS

### Article 1.1 Definitions

For purposes of this Code, the following terms, phrases, words and their derivations shall have the meanings set forth in this Article, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, words used in the singular number include the plural number, and the masculine, feminine and neuter genders shall each be deemed to include the other or others whenever the context so requires.

1.1.1 "Affiliated Person" means each Person who falls into one or more of the following categories:

- (a) each Person having, directly or indirectly, a Controlling Interest in the Grantee;
- (b) each Person in which the Grantee has, directly or indirectly, a Controlling Interest;
- (c) each officer, director, general partner, limited partner holding an interest of twenty-five percent (25%) or more, joint venture or joint venture partner, of the Grantee; and
- (d) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the Grantee;

provided that "Affiliated Person" shall in no event mean the City, the entity, if any, administering some or all of the Access Channels, any limited partner holding an interest of less than twenty-five percent (25%) of the Grantee, or any creditor of the Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common Control with, the Grantee.

1.1.2 "Basic Service" means any service tier which includes the retransmission of local television broadcast signals and any equipment or installation used in connection with Basic Service.

1.1.3 "Cable Act" means Title VI of the Communications Act of 1934, as amended by The Cable Communications policy act of 1984, the Cable

Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, and as may be further or otherwise amended from time to time (the "Cable Act").

- 1.1.4 "Cable Service" means "cable service" as defined in the Cable Act, including but not limited to the one-way transmission to a Subscriber of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection by the subscriber of such cable system in the licensee Service Area, and any and all other services that are now or are later construed to be covered by the definition of "cable service" under the Cable Act.
- 1.1.5 "Cable System" or "System" means a "cable system" as defined in the Cable Act.
- 1.1.6 "Channel" means a "channel" or "cable channel" as defined in the Cable Act.
- 1.1.7 "City" means the City of Maricopa, Arizona or, as appropriate in the case of specific provisions of this Code or a License Agreement, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of the City of Maricopa, Arizona, or any officer, official, employee or agent thereof, any designee of the foregoing, or any successor thereto.
- 1.1.8 "City Council" means the present governing board of the City and its designees or any successor thereto acting as the legislative body of the City.
- 1.1.9 "Code" means this Code and all modifications and amendments thereto.
- 1.1.10 "Control" or "Controlling Interest" means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the System, the License or the Grantee.
- 1.1.11 "Downstream" in cable television systems means transmission in the direction from the headend toward subscribers.
- 1.1.12 "FCC" shall mean the Federal Communications Commission, its designee, or any successor thereto.

- 1.1.13 "Grantee" means a person or entity granted a License.
- 1.1.14 "Gross Revenue" means and includes, subject to federal, state and local law, all revenue, as determined in accordance with generally accepted accounting principles which is derived, directly or indirectly, by the Grantee, by any Affiliated Person, and any other Person from or in connection with the distribution of any Cable Service on the cable system in the Service Area or the provision of any other services using or in connection with the Cable System in the Service Area, other than traditional telecommunications services or other similar or other service which the City is specifically prohibited by state or federal law from collecting a franchise fee. Without limitation, gross revenue shall include advertising revenue, customer revenues for basic, expanded basic or digital cable services, premium services, pay per view, installation, disconnection or service call fees; fees for the provision, sale, rental or lease of convertors, remote controls, additional outlets or other customer premises equipment, and all other services for which a fee may be collected under the law. The term encompasses any revenues that are received now, as well as any new revenue sources that may develop in the future.
- Nothing herein shall be interpreted to permit the City to include within Gross Revenues for purposes of calculating the License Fee pursuant to Article 4 any revenues on which Section 622 of the Cable Act (47 U.S.C. § 542) prohibits the City from collecting a License Fee.
- Gross Revenue shall not include taxes collected by a Grantee on behalf of a governmental authority (it being understood, however, that the License fee required by Article 4 is not a tax), any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.
- 1.1.15 "License" means an initial license, or renewal thereof, issued by the City in accordance with all federal, state and local law, which authorizes the occupation and use of the Streets to provide Cable Services.
- 1.1.16 "License Agreement" or "Agreement" means an agreement between the Grantee and the City which governs the construction, operation and maintenance of a Cable System within all or part of the City, and which is approved by the City Council pursuant to this chapter in conjunction with the grant of a License.
- 1.1.17 "May" is permissive.

- 1.1.18 "Person" means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.
- 1.1.19 "Prior Rights" means any legal right to use real property now belonging to the City that arose prior to the City's acquisition of the property, and any legal right granted by the State of Arizona or federal government prior to the issuance of a License by the City.
- 1.1.20 "Service" means any Cable Service, including the provision of any equipment and any installation of equipment or facilities and monthly use thereof, whether originated by the Grantee or any other Person, which is offered to any Person in conjunction with, or distributed over, the System, but does not include services other than Cable Service.
- 1.1.21 "Service Area" means the areas of the City in which a Grantee is authorized to provide Cable Service, except that for purposes of rate regulation, the term means the area where Grantee actually has installed its cable distribution system.
- 1.1.22 "Shall" is mandatory, not merely directive.
- 1.1.23 "Signal" means any transmission of radio frequency energy or of optical information.
- 1.1.24 "Streets" means the surface of, as well as the spaces above and below, any and all streets, roads, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels and other public rights-of-way within or belonging to the City, and any areas belonging to the City that connect a public right-of-way to another public right-of-way.
- 1.1.25 "Subscriber" means any Person lawfully receiving any Service provided by the Grantee by means of or in connection with the System, whether or not a fee is paid for such Service.
- 1.1.26 "Upstream Affiliate" means each Person who falls into one or more of the following categories:
- (a) each Person having, directly or indirectly, a Controlling Interest in the Grantee;
  - (b) each officer, director, general partner, limited partner holding an interest of twenty-five percent (25%) or more, joint venture or joint venture partner, of the Grantee; and

- (c) each Person, directly or indirectly, controlling the Grantee.

**Article 2**  
**GRANTING AUTHORITY AND**  
**FRANCHISING PROCEDURE**

Article 2.1 Granting Authority

- 2.1.1 The grant of Licenses by the City shall be subject to the provisions of applicable law, including the provisions in the Cable Act, as amended, governing cable system licenses and renewals thereof.
- 2.1.2 No Person shall commence or engage in the construction, operation, or maintenance of a Cable System, or provide Cable Services, in the City without a License granted in accordance with the provisions of this Code.
- 2.1.3 The City Council may grant one or more Licenses in accordance with this Code.
- 2.1.4 The grant of any License shall be made by adoption of a separate resolution by the City Council and shall be on such terms and conditions as may be specified in said separate resolution and a License Agreement between the City and the Grantee.
- 2.1.5 Any License granted shall be nonexclusive. The City specifically reserves the right to grant, at any time, and on such terms and conditions, such additional Licenses as it deems appropriate,
- 2.1.6 Any License granted authorizes the provision of only Cable Service and does not authorize any other services, including telecommunications services, and shall not be construed to authorize the license or lease to any person or entity of the right to occupy or use the public rights-of-way for the conduct of any private business, unless such person or entity has obtained a license or other agreement from the City Council for such use. Nothing in this Article 2.1.6 shall be interpreted to permit the City to use this Code to regulate other services, including telecommunications services, provided over a Cable System in a manner prohibited by federal law or regulation.
- 2.1.7 Nothing in this Code shall be deemed to in any way impair or affect the right of the City Council to acquire the property of a Grantee under this chapter, either through the exercise of the right of eminent

domain or as otherwise permitted by law, at a price permitted by law, and nothing in this chapter shall be construed to constitute a waiver or bar to the exercise of any governmental right or power of the City Council.

2.1.8 The City Council may grant a License to construct, operate and maintain a Cable System within all or any portion of the incorporated areas of the City, so long as such portion is not the property of an Indian Reservation, the State of Arizona or the federal government, to any Person who makes application for authority to furnish Cable Service, who complies with the terms and conditions of this Code and any other resolutions or ordinances, and with whom the City enters a License Agreement.

2.1.9 This Code grants the City Council discretionary authority, rather than mandatory authority, to grant Licenses for all or any part of the City. The City Council, acting in the interest of the residents, businesses and institutions of the City, may reject or grant any or all applications, if it determines that the best interests of the residents, businesses and institutions of the City would be best served by such rejection or grant, and to the extent permitted by the Cable Act, state law, and any other applicable law.

2.1.10 This Article shall not be deemed to require the grant of a License to any particular person or to prohibit the City Council from restricting the number of Grantees should it determine such a restriction would be in the public interest and permitted by the Cable Act, state law, and any other applicable law.

Article 2.2 Submission of Applications

2.2.1 Applications for initial Licenses shall be submitted to the City in such form and on such terms and conditions as the City Council may determine, subject to applicable law.

2.2.2 An application shall contain the following with respect to the proposed License, as well as such other information with respect to the proposed License as the City Council shall deem necessary or appropriate:

- (a) a non-refundable application fee submitted by money order, or cashier's or certified check, payable to the City of Maricopa, as adopted by separate resolution, i.e., *Maricopa Cable Television Code Fee Schedule*;



- (b) a description of the Cable Services proposed to be provided, including, without limitation, a description of facilities, equipment and staff;
- (c) the name, address and telephone number of the person the City may contact concerning the application;
- (d) the name, address and telephone number of the applicant, including the name, address and telephone number of each partner if a partnership, joint venturer if a joint venture, member or manager if a limited liability company, and/or the name, address and telephone number of all directors and officers and of the ten (10) largest holders of an ownership interest in the applicant if a corporation, along with the identification of the Upstream Affiliates of the applicant, and all persons with five percent (5%) or more ownership interest in the applicant, the Persons who control the applicant, and its Upstream Affiliates; all officers and directors of the applicant; and any other Cable System ownership interest of each named Person; ;
- (e) the name and address of all parent and subsidiary companies;
- (f) a detailed legal description of the boundaries of the Service Area;
- (g) a proposed construction schedule and sequence;
- (h) a *preliminary* site plan or map showing the proposed location of the applicant's Cable System and the relationship of the System to all existing roadway systems;
- (i) proposed fees, charges and associated terms and conditions for the Cable Services to be offered;
- (j) proposed financing plans for the construction and operation of the Cable System by which the proposed Cable Services would be provided;
- (k) a description of the *legal qualifications* of the applicant to hold the License, including, but not limited to, a demonstration of the valid existence of the business enterprise and the authority to conduct business within the State, and such other information as may be requested by the City;
- (l) a description of the financial qualifications of the applicant to hold the License, including, among other things, reasonable cost estimates, which state the basis for all costs so estimated, balance sheets, an audited financial statement, a financial statement certified by a corporate officer as containing true and accurate

information, or such other financial information and data certified as true and correct by a Certified Public Accountant as is satisfactory to the City, for the current and previous years, and other documents demonstrating that the applicant possesses the financial strength required to meet its cost estimates; and any other information as may be requested by the City;

- (m) a description of the technical qualifications of the applicant to hold the License, including, among other things, all localities where the applicant is the operator of a cable system, along with the name, address and telephone number of the local franchising authority in each locality responsible for monitoring the performance of the cable system, and any other information as may be requested by the City;
- (n) a summary of current disputes with any franchising authority;
- (o) full disclosure by applicant of its and any affiliated person's criminal convictions or other misconduct within the past ten (10) years, affecting applicant's performance, including but not limited to claims of false/misleading advertising, perjury, anti-trust violations, or consumer protection laws, as well as data pertaining to any civil proceedings, if any, pertinent to City's evaluation of the character and fitness of the applicant;
- (p) a certification that no elected official of the City or other party with a conflict of interest in reviewing the application holds an interest, direct or indirect, in the applicant or an Affiliated Person; and
- (q) such other information as the City may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest, as allowed by law.

### Article 2.3 Responsibilities of Applicants

It shall be the responsibility of each applicant for a License to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local governmental authority having jurisdiction.

Article 2.4 Public Availability of Application

Applications for Licenses, including any additions, modifications or amendments thereto, shall be available for public inspection at a designated City office during normal business hours.

Article 2.5 Evaluation Criteria

In making any determination hereunder as to any application for a License, the City Council may consider such factors as it deems appropriate and in the public interest, including, without limitation:

- (a) the legal, financial, technical and other appropriate qualifications of the applicant;
- (b) the ability of the applicant to become capable of providing Cable Service to all households in the Service Area within a reasonable period of time;
- (c) the ability of the applicant to provide adequate services, facilities and equipment, including, but not limited to, public, educational, and governmental access channel capacity, facilities, and financial support;
- (d) the ability of the applicant to maintain the property of the City in good condition throughout the term of the License;
- (e) the value and efficiency to the City and its residents of the Cable Services to be provided;
- (f) the willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the License, and that the applicant has substantially complied with the material terms and law in other areas where it has been granted a franchise or license;
- (g) the adequacy of the proposed compensation to be paid to the City, including the value of any facilities and Cable Services offered by the applicant to the City; and
- (h) any other public interest factors or considerations deemed pertinent by the City for safeguarding the interests of the City and the public.

Article 2.6 Procedure for Consideration of and Action on Applications

- 2.6.1 The City may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for Licenses and determine whether a License should be granted to an applicant, and

may require the applicant to furnish additional information and data for this purpose. In considering applications, the City Council may seek advice from other City officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or from the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications. The City Council retains the authority to make available to all City agencies it deems necessary all information contained in an application for a License, together with required statements submitted by an applicant.

2.6.2 If the City Council, after considering such information as it determines to be appropriate, elects to further consider one or more applications, the City Council shall set one or more public hearings for consideration of the application(s), fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or objections thereto may file written comments and appear before the City Council and be heard, and providing notice of such public hearing(s) in accordance with applicable law.

2.6.3 Upon completion of the steps deemed appropriate by the City Council, the City Council may grant the License, may specify the conditions under which the License is granted, including, without limitation, the negotiation of a License Agreement and Grantee's agreement to comply with this Code. Alternatively, the City may reject any and all applications from whatever source and whenever received. The City also reserves the right to waive any or all requirements when it determines that the best interests of the City may be served thereby.

#### Article 2.7 Negotiation of License Agreement

2.7.1 The City Council may authorize its designee to enter into License Agreement negotiations with an applicant. However, nothing herein entitles an applicant to such negotiations, nor does such authorization entitle an applicant to a License or License Agreement. The City Council may authorize its designee to terminate negotiations with an applicant at any time.

2.7.2 The Council may conditionally grant a License subject to the City and an applicant agreeing to the terms of the License Agreement. Such License Agreement shall be subject to the approval of the Council. An applicant receiving such a License may not begin to construct, operate, nor maintain a Cable System, and may not begin to provide Cable Service, absent approval by the City Council of a License

Agreement with the City. A conditionally granted License shall be null, void and of no effect whatsoever if the City and the applicant fail to reach agreement on a License Agreement.

Article 2.8 Terms and Conditions of License

2.8.1 The terms and conditions applicable to any License granted pursuant to this Code shall be set forth in the License Agreement. Such License Agreement, among other things, shall address the following subjects:

- (a) the term of the License, which shall not exceed fifteen (15) years; provided, however, that nothing in this paragraph prevents the negotiation of any shorter term;
- (b) the Service Area and the Cable Services to be provided;
- (c) the compensation to be paid to the City, which may include the payment of fees or the provision of facilities or services, or both;
- (d) consumer protection and customer service standards, signal quality standards, nondiscrimination requirements, and other public interest obligations;
- (e) services, facilities and equipment, including, but not limited to, public, educational, and governmental access channel capacity, facilities, and financial support, and institutional networks;
- (f) assurances of Grantee's compliance with this Code;
- (g) the circumstances upon which the License may be terminated or canceled;
- (h) the mechanisms, such as performance bonds, liquidated damages, security funds or letters of credit, to be put in place to ensure the performance of the Grantee's obligations under the License;
- (i) the City's right to inspect the facilities and records of the Grantee;
- (j) insurance and indemnification requirements applicable to the Grantee;
- (k) the obligation of the Grantee to maintain complete and accurate books of account and records, and the City's inspection rights with respect thereto;
- (l) provisions to ensure compliance with applicable signal quality standards and applicable electric codes, including, among other things, the National Electric Code, as adopted in the Maricopa Building Code, as amended from time to time, and the National Electric

Safety Code, as published by the Institute of Electrical and Electronics Engineers, Inc., as amended from time to time;

- (m) provisions to ensure quality workmanship and construction methods;
- (n) provisions to ensure that the Grantee will comply with all applicable City, state and federal laws, regulations, rules and policies, as amended from time to time;
- (o) provisions to ensure adequate oversight and regulation of the Grantee by the City;
- (p) provisions to restrict the assignment or other transfer of the License without the prior written consent of the City, and procedures for City review of requests to assign or transfer a License;
- (q) remedies available to the City to protect the City's interest in the event of the Grantee's failure to comply with terms and conditions of the License;
- (r) provisions to ensure that the Grantee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the Grantee, as amended from time to time, including the Federal Communications Commission;
- (s) provisions to ensure that the Grantee will protect the property of the City and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the License;
- (t) provisions designed to minimize the extent to which the public use of the Streets of the City are disrupted in connection with the construction of improvements relating to the License; and
- (u) such other provisions as the City determines are necessary or appropriate in furtherance of the public interest.

## Article 2.9 Grantees to Reimburse City for Costs

- 2.9.1 Under normal circumstances, the initial application fee should cover the costs incurred by the City in connection with the award of the License and the negotiation of the License Agreement. In processing applications and agreements where the City's costs, including but not limited to legal and consulting fees, exceed the initial application fee, the City and the Grantee shall mutually agree upon an amount that

the Grantee shall pay to offset those costs in excess of said application fee. A License shall not be issued until such agreed upon costs are paid in full to the City.

Article 2.10 Reservation of Authority

Nothing in this Code shall:

- (a) abrogate the right of the City to exercise its police powers, or perform any public works or public improvements of any description,
- (b) be construed as a waiver of any codes or ordinances of the City or of the City's right to require the Grantee or any Person utilizing the System to secure the appropriate permits or authorizations for such use, or
- (c) be construed as a waiver or release of the rights of the City in and to the Streets, including the right to abandon or extinguish.

**Article 3  
RENEWAL AND TRANSFER**

Article 3.1 Renewal

3.1.1 An application for renewal of any License granted under this Code shall be made in writing and filed with the City Council at least one (1) year prior to the expiration of the License. The application shall be accompanied by a non-refundable renewal fee, in an amount as adopted by separate resolution, i.e., *Maricopa Cable Television Code Fee Schedule*, and shall be submitted by cash, money order, or cashier's or certified check, payable to the City of Maricopa. Nothing herein shall be deemed to prohibit the City from permitting a Grantee from offsetting such fee against License Fees required by Article 4 over a period of years, if such offset is required by a court of competent jurisdiction or applicable law, or is approved by the City Council, if the City in its sole discretion permits such an offset.

3.1.2 An application for renewal is subject to the following procedures:

- (a) The application shall set forth facts and circumstances that, in the opinion of the Grantee, warrant renewal of the License. The application may also request certain modifications of the License.
- (b) After receipt of the application, the Council shall schedule a public hearing on the matter, giving at least fifteen (15) days' (or more, if required by the Cable Act)

notice of such hearing. Such notice shall set forth the purpose for which the hearing has been called. After hearing all of the evidence, opinions and representations, the City Council shall then render a decision either to renew or not to renew the License, subject to any applicable provisions under Section 626 of the Cable Act.

- (c) The City and a Grantee shall comply with the renewal provisions in Section 626 of the Cable Act, 47 U.S.C. § 546, if the Grantee submits a timely renewal request pursuant to Section 626.

## Article 3.2 Transfer

- 3.2.1 Any request for a transfer or change in control of a License, a Grantee, or a Cable System shall be accompanied by a non-refundable transfer fee, as adopted by separate resolution, i.e., *Maricopa Cable Television Code Fee Schedule*, and submitted by money order, or cashier's or certified check, payable to the City of Maricopa. Nothing herein shall be deemed to prohibit the City from permitting a Grantee from offsetting such fee against License Fees required by Article 4 over a period of years if such offset is required by a court of competent jurisdiction or applicable law, or is approved by the City Council, if the City in its sole discretion permits such an offset.
- 3.2.2 Transfer of License or Interest Therein. Neither the Grantee nor any other Person may transfer the License or any of the Grantee's rights or obligations in or regarding the System or the License without the prior written consent of the City, which consent shall not be unreasonably withheld.
- 3.2.3 Transfer of Control. No change in Control of the Grantee, the System or the License shall occur, by act of the Grantee or any Affiliated Person, by act of any Person holding Control of the Grantee, the System or the License, by operation of law, or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld.
- 3.2.4 Transfer Procedures. Any request for approval shall be handled by the City in accordance with its customary rules and procedures. In connection with any request for approval, the Grantee shall submit to the City the information set forth in Article 3.2.5.



3.2.5 Information. An application for transfer shall not be deemed complete unless it includes, at a *minimum*, the following information:

- (a) Name and address of the proposed transferee and identification of the ownership and control of the transferee, including: the names and addresses of the ten (10) largest holders of an ownership interest in the transferee, the identification of the Upstream Affiliates of the transferee, and all persons with five percent (5%) or more ownership interest in the transferee; the Persons who control the transferee and its Upstream Affiliates; all officers and directors of the transferee; and any other Cable System ownership interest of each named Person.
- (b) A demonstration of the transferee's technical ability to construct, maintain, upgrade and operate the System, including identification of key personnel.
- (c) A demonstration of the transferee's legal qualifications to construct, maintain, upgrade and operate the System.
- (d) The transferee must show that it has not, at any time during the ten (10) years preceding the submission of the petition, been convicted of any act or omission of such character that the transferee cannot be relied upon to deal truthfully with the City and the Subscribers of the System, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.
- (e) The transferee must certify that no elected official of the City holds an interest, direct or indirect, in the transferee or an Affiliated Person of the transferee.
- (f) a description of the financial qualifications of the transferee to hold the License, including, among other things, reasonable cost estimates, which state the basis for all costs so estimated, balance sheets, an audited financial statement, a financial statement certified by a corporate officer as containing true and accurate information, or such other financial information and data certified as true and correct by a Certified Public Accountant as is satisfactory to the City, for the current and previous years, and other documents demonstrating that transferee possesses the financial strength required to meet its cost estimates; and any other information as may be requested by the City.

- (g) A description of the transferee's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the transferee or any of its principals have, or have had, a cable franchise or license or any interest therein.
- (h) A detailed description of any upgrade or change of the system proposed, if any, including channel capacity, technical design, performance characteristics, headend, and access facilities.
- (i) Procedures for the investigation and resolution of customer service complaints, including, among other things, details of the local office or agent that will handle such complaints, and procedures for installations and service calls.
- (j) An affidavit or declaration of the transferee or authorized officer certifying the truth and accuracy of the information in the petition, acknowledging the enforceability of petition commitments, and certifying that the proposal meets all applicable federal and state law requirements.

3.2.6 Additional Information.

In addition to the information required by Article 3.2.5, the City may request:

- (a) pro forma financial projections for the remaining term of the License, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules; and
- (b) any other information as may be reasonably necessary to demonstrate compliance with the requirements of the License Agreement or for the City to complete its review of the transfer request.

3.2.7 Financing.

Notwithstanding the foregoing, the Grantee may make, execute, or enter into any financing agreement with a financial institution for the purpose of creating and perfecting a security interest in the System for financing purposes without prior approval of the City; provided, however, that the secured party under any such agreement may not exercise any right or remedy thereunder (including, without limitation, the remedy of foreclosure) that would have the effect of transferring, selling or otherwise disposing of the System in a manner that would

require the consent of the City pursuant to this Article 3.

Article 3.3 Recovery of City Costs

3.3.1 Under normal circumstances, the renewal or transfer fee should cover the costs incurred by the City in connection with a license renewal or transfer. In processing renewal or transfer requests where costs exceed the renewal or transfer fee, the City and the Grantee shall mutually agree upon an amount that the Grantee shall pay to offset those costs in excess of said renewal or transfer fee.

The grant of a renewal or transfer request shall not be deemed effective until such agreed upon costs are paid in full to the City, or unless otherwise expressly permitted in a License Agreement. Nothing herein shall be deemed to prohibit the City from permitting a Grantee from offsetting such costs and expenses against License Fees required by Article 4 over a period of years if such offset is required by a court of competent jurisdiction or applicable law, or is approved by the City Council, if the City, in its sole discretion, permits such an offset.

**Article 4  
LICENSE FEES**

Article 4.1 Compensation to the City

As compensation for the License, the Grantee shall pay, or cause to be paid, to the City the amounts set forth in this Article 4.1.

4.1.1 License Fees -- Amount. The Grantee shall pay, to the City, License fees as set by the City Council and adopted by separate Resolution.

4.1.2 License Fees -- Payment. All such payments of license fees shall be made on a quarterly basis and shall be remitted not later than April 30, July 31, October 31 and January 31 throughout the term of the License for the three-month period ending on the last day of the month prior to the month such payment shall be submitted pursuant to this Article 4.1.2.

4.1.3 Grantee to Submit License Fee Report and Financial Statements.

The Grantee shall submit to the City:

- (a) a report, in such form and containing such detail as the City shall require, not later than April 30, July 31,

October 31 and January 31 throughout the term of the License setting forth the gross revenue for the three month period ending on the last day of the month prior to the month such quarterly report shall be submitted pursuant to this Article 4.1.3, or pursuant to a quarterly schedule agreed to by the City; and

- (b) financial information requested by the City, including, but not limited to, billings reports, and audited or certified financial statements. The City shall, however, consider the sensitive nature of financial information when determining whether to require its production.

#### 4.1.4 License Fee Payments Subject to Audit; Remedy for Underpayment.

No acceptance of any license fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the City may have for further or additional sums payable under this Code and the License Agreement, and all amounts paid shall be subject to audit and recomputation by the City.

The City shall have the authority to request copies of all financial statements and records of the Grantee in order to verify Grantee's compliance with the license fee requirements under this Code and a License Agreement.

If, as a result of such audit or any other review, the City determines that the Grantee has underpaid its fees in any three (3) month period by one percent (1%) or more, then, in addition to making full payment of the relevant obligation plus interest on such amount at the rate provided by Article 4.1.5 or otherwise set forth in a License Agreement, the Grantee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.

The Grantee shall provide full access to the financial records and other documents the City requests to verify Grantee's compliance with its license fee obligations at the Grantee's place of business within the City or such other location in the City mutually agreeable to the City and Grantee.

#### 4.1.5 Interest on Late Payments.

If any payment required by this Code or the License Agreement is not

actually received by the City on or before the applicable date fixed in this Code, the Grantee shall pay interest thereon, from the due date to the date paid at a rate of one percent (1%) per month, compounded daily, for the period of delinquency.

4.1.6 License Fee not a Tax.

The License fee payable pursuant to this Article 4 **is not a tax** and not in the nature of a tax, and is in addition to any and all taxes of general applicability or other fees or charges which the Grantee shall be required to pay to the City or any other governmental authority.

4.1.7 Costs Borne by Grantee.

Unless otherwise specifically stated in a franchise ordinance or required by law, all acts which a franchisee is required to perform under the franchise ordinance or applicable law shall be performed at the franchisee's expense

**Article 5  
THE SYSTEM**

Article 5.1 The System and Its Operations

5.1.1 General Obligation.

The Grantee shall construct, operate, maintain, and upgrade the System as provided in the License Agreement and this Code. Without limiting the foregoing, a System shall have, unless otherwise expressly set forth in a License Agreement, a capacity of at least 54 downstream video channels with the amount of activated downstream video channels mutually agreed upon by the City and a Grantee in a License Agreement. Two-way capability shall be designed into the System to the extent set forth in a License Agreement.

5.1.2 Testing Procedures: Technical Performance.

Throughout the term of the License Agreement, the Grantee shall operate and maintain the System in accordance with the testing procedures and the technical performance standards of the FCC in effect from time to time. Each cable television system shall, at minimum, relay to Subscriber terminals those broadcast signals required by the FCC; distribute in color all television signals which it receives in color; make available upon request by any Subscriber

receiving channels showing premium services and pay per view events, a lockout device which prevents the unauthorized viewing or other receipt of such channels; and shall include equipment capable of providing standby power for the headend, which shall be so constructed to automatically notify the Grantee when it is in operation or to automatically revert to the standby mode when the AC power returns. Further, to the extent not prohibited by federal law:

- (a) Grantee shall provide to the City written reports of the Grantee's bi-annual FCC Performance Tests and, at the City's request, shall advise the City when a proof of Performance Test is scheduled. In addition, the City may order, at Grantee's expense, reasonable technical evaluation sessions at any time during the franchise no more than once every three years, or more often in the event of a documented pattern of uncured complaints relating to technical issues;
- (b) To assist in the technical evaluation, the City Manager or his designee may enlist an independent consultant to conduct an analysis of the cable system and its performance and to submit a report of such analysis to the City;
- (c) During a technical evaluation session, the Grantee shall fully cooperate with the City or its consultant and shall provide, without cost, such information and documents as the City or its consultant may reasonably request to perform the technical evaluation; and
- (d) If, as a result of the evaluation session, or at any other time, the City Manager or his designee determines that reasonable evidence exists of inadequate System performance, it may require the Grantee to perform technical tests and analyses directed toward such suspected inadequacies. The report shall include at least a description of the problem in performance, what cable components were tested, the equipment used and procedures employed in testing; the method of resolution, if any; and any other information pertinent to said tests and analyses which may be required by the City Manager or determined when the test is performed. If the tests indicate the System is not in substantial compliance with FCC standards, the Grantee shall reimburse the City for any costs it incurred in such test (such as consultant and attorney's fees.)

5.1.3 Emergency Override.

The System shall be installed and operated with an emergency alert system in compliance with the rules of the Federal Communications Commission and the State of Arizona "Emergency Alert System Operation Plan ("State Plan")," as amended from time to time, provided, however, that, notwithstanding any such FCC or state rules, the System shall be configured such that, in the event of a local emergency as reasonably determined by the City, the City shall be able to interrupt, to the extent not prohibited by FCC regulations or the state Plan, audio and video Signals distributed over the System for the delivery of appropriate Signals necessitated by such emergency. The emergency override system will be operated in accordance with the License Agreement, and rules and regulations issued by the City as permitted by applicable law and as amended from time to time.

5.1.4 Interconnection.

5.1.4.1 Unless otherwise expressly set forth in a License Agreement, a Grantee shall cooperate with other Grantees in making available their signal distribution capabilities if one operator should so request. The expense of labor and material to effectuate such a juncture shall be the responsibility of the Grantee requiring such services, who shall also indemnify and hold harmless the furnishing Grantee from all damages and liabilities whatsoever stemming from the requesting Grantee's use thereof.

Further, unless otherwise expressly exempted in a License Agreement, a Grantee shall interconnect its System with any or all other Systems located in the City upon the request of the City, provided that the City shall not require a Grantee to interconnect with other Systems if the City and the Grantee reasonably determine that such interconnect is technically and economically infeasible.

5.1.4.2 Upon receiving the request of the City to interconnect, a Grantee shall immediately initiate negotiations with the other affected System or Systems in order that technical details be resolved and that costs may be shared on an equitable basis. In the event of a dispute, the City Manager may issue an order establishing the

terms and conditions under which interconnection shall occur, and any franchisee shall comply with the order

Article 5.2 Requirements with Respect to Work on the System

5.2.1 General Requirements.

The Grantee shall comply with the terms set forth in Article 6 in connection with all work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System, in addition to any other requirements or procedures reasonably specified by the City. All work involved in the construction, operation, maintenance, repair, upgrade, and removal of the System shall comply with all applicable laws and regulations, and shall be performed in an orderly, workmanlike, safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.

Article 5.3 Cable Construction and Construction Timetable

- 5.3.1 A Cable System shall be constructed in accordance with the provisions of the License Agreement.
- 5.3.2 It is the policy of the City to require construction of a Cable System designed to serve Subscribers in an area licensed by the City as rapidly and expeditiously as possible. The Grantee shall diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies, and others as necessary to comply with the provisions of this Code and other federal, state and City laws, codes and resolutions.
- 5.3.3 A Cable System shall be constructed pursuant to a construction timetable specified in the License Agreement.
- 5.3.4 The City may require Grantee to report on construction progress and provide information showing specifically whether the construction schedule is being met.
- 5.3.5 Prior to commencement of construction of the System, the Grantee shall provide the technical specifications, in adequate detail, to be utilized in the construction of the proposed Cable System. At such



time that the Grantee applies for a permit to construct a portion of the System, the Grantee shall submit to the City Public Works Department a detailed site plan or map showing the proposed location of that portion of the System and the relationship of that portion of the System to all existing roadway systems, with sufficient information for the City of Maricopa Public Works Department to issue the right-of-way permit, and to inspect the work being performed in the public easements and public rights-of-way. Upon completion, the applicant shall file "as-built" plans with the City in both hard copy and, if requested by the City, electronic mapping format compatible with the City's current electronic mapping format, showing the detailed location of all underground cable plant and active electronics, including but not limited to, all transmitting and receiving pickup locations, the fiber and coaxial plant, and coaxial amplifiers and pedestal locations.

## **Article 6**

### **GENERAL REQUIREMENTS FOR WORK ON THE SYSTEM**

#### Article 6.1 Licenses and Permits

The Grantee, at its own cost and expense, shall have the sole responsibility for applying for, within sixty days after acceptance of any License, and diligently pursuing all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain, repair or upgrade the System, or any part thereof, prior to commencement of any such activity. No construction will take place in public easements or public rights-of-way prior to the permitting by and approval of the City of Maricopa Public Works Department.

#### Article 6.2 Relocation

- 6.2.1 During the term of a License Agreement, whenever the City alters, repairs, improves, or changes the grade of any public streets, alleys, ways, highways and bridges in the License Area during the term of the License Agreement, then and in such event, Grantee, its successors or assigns, shall promptly, upon written notice, make such changes in the location, structure or alignment of Grantee's facilities as the public officials in charge of such work may deem necessary. Unless altered by a License Agreement, such changes shall be at Grantee's own expense when Grantee has no Prior Rights or has located its facilities in violation of this Code or state law. If Grantee has Prior Rights and located its facilities in accordance with this Code and state law, such changes shall be at the City's expense.

- 6.2.2 The City reserves the right, acting through its City Council, to cause Grantee, its successors and assigns, to promptly change the location of any of Grantee's facilities as the public interest is deemed by the Council to require. Unless altered by a License Agreement, the expenses of such change of location shall be borne and paid for by the Grantee when Grantee has no Prior Rights or has located its facilities in violation of this Code or state law, and borne by the City when Grantee has Prior Rights and located its facilities in accordance with this Code and state law.
- 6.2.3 If the City acquires public right-of-way where Grantee has Prior Rights to private easements and located its facilities in accordance with this Code and state law, and the City requires Grantee to relocate Grantee's facilities from said private easements, the relocation shall be at the City's expense.
- 6.2.4 The City will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner.

Article 6.3 Protect Structures

In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Grantee shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks.

The Grantee shall not alter any water main, sewerage or drainage system, or any other municipal structure in the Streets required because of the presence of the System in the Streets. If any such alteration is required, said alteration shall be paid for by the Grantee, at its sole cost and expense, and in a manner prescribed by the City. The Grantee shall not undertake any such alteration without the City's prior approval.

The Grantee shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the City, any street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Grantee.

Article 6.4 No Obstruction

In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Grantee shall not obstruct the Streets, railways, passenger travel, river navigation, or other traffic to, from, or within

the Service Area without the prior consent and required permits of the appropriate authorities.

Article 6.5 Abandonment

If any part of the Cable System is discontinued for any reason for a continuous period of six (6) months, or if the Cable System or any portion of such System has been installed in the Streets without complying with the Code or License Agreement, or if a License has been terminated, canceled or has expired without renewal, the Grantee shall promptly, upon written notice from the City, totally remove from the Streets, as applicable, the System or any portion of the System, including, but not limited to, equipment, facilities, and cable lines, at Grantee's own cost and expense, unless the Maricopa Public Works Department, in its sole discretion, permits any portion of such abandoned System to remain within the Streets.

Upon such removal, the Grantee shall promptly restore the Streets from which such System or portions of System was removed to a condition satisfactory to the City. The City shall have the right to require removal of any portion of the System used to provide Cable Service to the fullest extent not prohibited by applicable federal or state law.

Notwithstanding this Article 6.5, a Grantee shall not be required to remove those portions of the System that are necessary for the Grantee's continued provision of non-Cable Service, including telecommunications service, so long as the City Code or agreement by which the City permits the Grantee to use the Streets to provide non-Cable Service remains valid and in effect and the City is prohibited by state or federal law from ordering such removal.

**No work shall be started in the public rights-of-way or easements without prior approval and required permitting by the City of Maricopa Public Works Department.**

Article 6.6 Movement of Above-Ground Facilities

The Grantee shall, upon reasonable advance written notice by the City or any Person holding a permit to move any structure, temporarily move its wires or other above-ground facilities to permit the moving of said structure. The Grantee may impose a reasonable charge, not to exceed its actual costs, before or after such movement, on any Person other than the City for any such movement of its wires.

Article 6.7 Safety Precautions

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including but not limited to, the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

Article 6.8 Moving Facilities

The City may, at any time, in case of fire, disaster, or other emergency, as determined by the City, in its sole discretion, cut or move any of the wires, cables, amplifiers, appliances, or other parts of the System, in which event the City shall not incur any liability to the Grantee, any Affiliated Person or any other Person. When possible, however, the Grantee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself. All costs to repair or replace such wires, cables, amplifiers, appliances, or other parts of the System shall be borne by the Grantee.

Article 6.9 Underground Facilities

- 6.9.1 On streets and roads where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the Grantee's expense. Between a street or road and a subscriber's residence, the cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone utility wiring are aerial, a Grantee may install aerial cable except where a property owner or resident requests underground installation and agrees to bear the additional cost over aerial installation.
- 6.9.2 In areas where facilities do not have to be underground, a Grantee shall not erect any new poles along any street or public way of the City except as may be reasonably required and only then with the approval of the City.
- 6.9.3 Except in areas where aerial cable is allowed, a Grantee shall place all cable and appurtenances underground to the maximum extent possible. In the event existing technology precludes the placing of some appurtenances underground, such as power supplies, amplifiers, and line extenders, they may be placed above ground, but only if they are located so as to be as unobtrusive as possible. Grantee shall endeavor, wherever feasible, to place all above-ground appurtenances on lot lines.

6.9.4 Prior to the commencement of underground construction a Grantee must have complied with the following requirements:

- (a) Have received a permit from the City for construction on public property or rights-of-way;
- (b) Have received clearance from utilities in the area of construction; and
- (c) Where construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven (7) days' prior written notice by mail or hand delivery to all such property occupants. The notice shall identify the name and the address of the Grantee and provide a local or toll-free telephone number that the affected person may call for more information or to lodge a complaint.

6.9.5 All non-aerial wire must be installed underground. Any non-aerial wire not installed underground as of the effective date of this Code, must be placed underground within 120 days after the effective date.

Article 6.10 Hearing Impaired

To the extent required by applicable law, video channels in a system must include any closed captioning information for the hearing impaired.

Article 6.11 Antennas; Interference

A Grantee shall not design, install or operate its facilities in a manner that will interfere with the signals of the electrical system located in any building or the Cable System of another Grantee. Any antenna structure used in the System shall comply with construction, marking and lighting of antenna structures as required by the Federal Aviation Administration. Antennas, supporting structures, and outside plant used in the System must be designed to comply with all applicable federal, state and local regulations on tower structures and outside plant.

Article 6.12 Parallel Cables

All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.

Article 6.13 Liability for Contractors and Agents

The Grantee shall be solely and completely responsible for the actions taken

by any contractor or other agent employed to construct or install the Grantee's facilities on Streets as well as on public or private property.

Article 6.14 Compliance with National Codes

A Grantee shall at all times comply with the following, as amended from time to time:

- a. National Electric Safety Code (National Bureau of Standards);  
and
- b. National Electrical Code (National Bureau of Fire Underwriters).

Article 6.15 Emergency Response

A Grantee shall make available, at all hours, personnel capable of responding to emergency conditions requiring immediate repair to any facilities owned by the state, county, city, or the gas, electric, and telephone utilities, as well as pipeline companies or similar industries. The Grantee shall respond to non-emergency requests for location of its facilities within forty-eight (48) hours or such other period of time agreed to by the City Manager. The Grantee shall be a member of the Blue Stake Center, or comply with State Underground Law, for its Service Area.

Article 6.16 Use of Existing Poles and Conduits; Boring

A Grantee shall utilize, with the owner's permission, existing poles, conduits or such other facilities whenever feasible and shall make its own facilities available for other Grantees. Nothing in this Article 6.16 shall be interpreted to grant a Grantee the right to use any existing easement or to utilize any poles, conduits, easements or other facilities without the owner's permission. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific City approval is received. Upon request of the City, copies of written documentation giving authorization to the Grantee for use of poles, conduits or other facilities must be made available for review with the City within five (5) business days after request. A Grantee may install its own poles only when approved by the City and then subject to whatever reasonable terms and conditions the City requires.

Article 6.17 Tree Trimming

A Grantee may trim trees within public rights-of-way at its own expense as necessary to protect its wires and facilities, subject to prior approval (or prompt notification after trimming if precipitated by an emergency) of the City

and any direction that may be provided by the City. Trees on private property may be trimmed only with the consent of the property owner.

## **Article 7 SERVICE OBLIGATIONS**

### Article 7.1 Service to All Persons

- 7.1.1 The Grantee shall make all Services distributed over the System available to every dwelling unit within the Service Area reaching the minimum density of at least twenty-five (25) dwelling units per mile. Service shall be offered to all new homes or previously unserved dwellings located within 125 feet of Grantee's feeder cable upon request by a potential Subscriber.
- 7.1.2 Notwithstanding any other provision of this Article 7, the Grantee shall extend the System so as to make all Services distributed over the System available to all Persons within all new subdivisions located within the Service Area during the term of the License Agreement, provided that the nearest boundary of the subdivision is no greater than one-half mile from the nearest point of connection on the cable system. If the subdivision is more than one-half mile from the nearest connection point and the density requirement set forth in Section 7.1.1 is not met between the subdivision and the connection point, Grantee shall extend the cable system to all lots within the subdivision if the developer agrees to pay Grantee's incremental costs (reasonable labor and materials) incurred beyond those for an extension otherwise involving a density of 25 homes per mile. The Grantee shall use and demonstrate its best efforts to extend its System to any such subdivision at such time that trenches are open in such subdivision for the initial installation of utility lines.
- 7.1.3 Upon the request of any potential Subscriber(s) in an area not meeting the foregoing requirements, Grantee shall nevertheless provide Service to such Persons if such Persons agree to share with Grantee the incremental costs (reasonable labor and materials) incurred beyond those for an extension otherwise involving a density of twenty-five (25) homes per mile.
- 7.1.4 The Grantee may elect to offer Services to areas not meeting the above standards.
- 7.1.5 Absent a showing by Grantee to City of circumstances beyond Grantee's reasonable control, an extension of Service pursuant to

subsections 7.1.2 and 7.1.3 shall be accomplished within ninety (90) days of the developer's or potential Subscriber's request, or such period of time agreed to by the developer or potential Subscriber.

Article 7.2 No Discrimination

Neither the Grantee nor any Affiliated Person shall discriminate or permit discrimination between or among any Persons in the availability of Services. It shall be the right of all Persons to receive continuously all available Services insofar as their financial and other obligations to the Grantee are satisfied.

Article 7.3 Service to Governmental and Institutional Facilities

The Grantee shall provide wiring and free service to the governmental and institutional facilities located in the Service Area that are designated in a License Agreement or otherwise designated by the City.

Article 7.4 PEG Access

In accordance with Section 611 of the Cable Act (47 U.S.C. § 531), the City may require that channel capacity be designated for public, educational or governmental ("PEG") use, except to the extent the City reasonably determines that any or all such requirements are *technically or economically* infeasible or unless otherwise expressly permitted in a License Agreement. The capacity and related equipment and facilities, services and financial support to be provided by the Grantee shall be made available according to the terms expressly set forth in the License Agreement. In accordance with Section 611 of the Cable Act (47 U.S.C. § 531), the City may require rules and procedures for the use of PEG capacity and shall prescribe rules and procedures under which the Grantee is permitted to use PEG channel capacity for the provision of other Cable Services if such channel capacity is not being used for the purposes designated, and by which such permitted use shall cease.

Article 7.5 Institutional Services

The License Agreement may contain terms for the support of an institutional network should the City determine that the City could expect reasonable benefits from such a network.



**Article 8**  
**FEES AND CHARGES**

Article 8.1 Rates, Fees and Charges

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any Affiliated Person for any Service as of the effective date of a License Agreement shall be provided to the City. Before any new or modified rate, fee, charge, deposit or associated term or condition may be imposed, the Grantee must submit to the City a rate card or similar document that is provided to subscribers reflecting the modification, and notify affected Subscribers in writing (which may be by any means permitted under applicable law, but, at a minimum, shall include notice in subscribers' monthly bills), at least 30 days prior to such change, and such notice shall also be given to the City at least 30 days prior to such change, except that no notice to subscribers is required for rate increases that are exempt from a notice requirement under Section 632 (c) of the Cable Act, 47 U.S.C. §552(c). All Subscriber notices shall, unless the rate change is actually subject to approval of the City, contain a statement that, due to federal regulation, the City does not regulate cable television rates.

Article 8.2 Prohibition Against Discrimination

- 8.2.1 Except to the extent otherwise expressly permitted by applicable law (and after receiving the City's approval, to the extent such approval may be permitted under applicable law):
- (a) neither the Grantee nor any Affiliated Person shall discriminate or permit discrimination between or among any Persons in the rates, terms and conditions for any Service, except as set forth below;
  - (b) the Grantee shall provide Service to each resident at the same rates charged to all other residential Subscribers in the Service Area;
  - (c) the Grantee shall not require the subscription to any tier other than the Basic Service tier as a condition of access to video programming offered on a per Channel or per program basis; and
  - (d) as provided in 47 U.S.C. §543 (b) (8) (A), as amended from time to time, the Grantee shall not discriminate between Subscribers to the Basic Service tier and other Subscribers with regard to the rates charged for video programming offered on a per Channel or per program basis.

8.2.2 The foregoing requirements shall not prevent (to the extent expressly permitted by applicable law (and after receiving the City's approval to the extent such approval may be required under applicable law)), the use of:

- (a) short-term sales promotions and other short-term discounts or reduced charges;
- (b) reasonable discounts or reduced charges to senior citizens or other economically disadvantaged groups; or
- (c) bulk rate arrangements.

Article 8.3 Parental Control Devices

Upon the request of a Subscriber, the Grantee shall provide a parental control device by which the Subscriber can block completely the video and audio signals of a particular Cable Service during periods selected by that Subscriber to the extent required by law. Grantee may charge a reasonable fee for such device, not to exceed the maximum rate permitted by applicable law. Unless altered by federal law, Grantee shall, however, prior to issuing a parental choice device, inform the Subscriber that, for no fee, the Subscriber can request a complete block of the particular Cable Service.

Article 8.4 City's Regulation of Fees and Charges

The City reserves the right, upon satisfaction of the conditions set forth in the Cable Act, to regulate the rates, fees, charges, deposits and associated terms and conditions for any Service provided pursuant to the License Agreement to the fullest extent permitted by applicable law, and the City may establish rules and regulations in connection therewith from time to time. In connection with such regulation, the City shall comply with FCC rules and provide the public with an opportunity to comment.

**Article 9**

**CONSUMER PROTECTION AND PRIVACY PROTECTION**

Article 9.1 Customer Service and Consumer Protection Standards

9.1.1 Grantee To Comply With Standards Provided Under Article 10 and FCC Rules.

The Grantee shall comply in all respects with the requirements set forth in Article 10 and the customer service requirements established by the FCC pursuant to Section 632 (c) of the Cable Act (47 U.S.C. § 552(c)).

9.1.2 New, Revised or Additional Customer Service Standards.

The City reserves the right, from time to time, to establish and enforce new, revised or additional customer service requirements, and remedies for a Grantee's failure to comply therewith, which may exceed standards set forth in this Code or the standards established by the FCC pursuant to Section 632 (c) of the Cable Act (47 U.S.C. § 552(c)).

Article 9.2 Privacy Protection

9.2.1 Grantee To Protect Privacy.

The Grantee shall protect all Persons against invasions of privacy in compliance with Section 631 of the Cable Act (47 U.S.C. § 551) and regulations adopted pursuant thereto.

9.2.2 Grantee To Provide Certain Information To City.

The Grantee shall cooperate with the City so as to ensure the City's ability to enforce the terms and conditions of this Code and the License Agreement to the maximum extent permitted by applicable law.

**Article 10  
CUSTOMER SERVICE STANDARDS AND SUBSCRIBER BILLS**

Article 10.1 Solicitation of Subscriptions

10.1.1 Subscription Information.

10.1.1.1 Before providing any Service to any potential Subscriber and at least once a year to all Subscribers, the Grantee shall provide the following subscription information to all Subscribers, in a clear, complete and comprehensive form:

- (a) a description of the Cable Services provided by the Grantee, accompanied by a listing of the charges for each such service, either alone or in combination;
- (b) a listing of all rates, terms and conditions for each Cable Service or tier of Cable Service, both

- alone and in combination, and all other charges, such as for returned checks and for relocating cable outlets;
- (c) a general explanation of other communications devices which may be used in conjunction with the System, including, but not limited to, video cassette recorders and remote control devices, and, if applicable, the use of publicly available equipment and a listing of the Grantee's charges for connecting such devices to the System;
  - (d) a description of the Grantee's billing and collection procedures;
  - (e) the procedure for the resolution of billing disputes, including the telephone number of the City office Subscribers may call with regard to billing disputes, as specified by the City;
  - (f) a description of the Grantee's policies concerning credits for outages and reception problems, consistent with these customer service standards;
  - (g) an explanation of the procedures and charges, if any, for upgrading, downgrading or disconnecting services, consistent with these customer service standards;
  - (h) the required time periods for the completion of installation requests, consistent with these customer service standards, and an indication of the penalties for failure to complete installation within such time periods;
  - (i) the complaint resolution process;
  - (j) the procedures by which the Subscriber will be notified of any rate increase;
  - (k) the local numbers for the Grantee's customer service telephone system;
  - (l) a listing of the access channels and a description of the purposes and uses of such channels;
  - (m) a description of significant rights accorded to the Subscriber pursuant to applicable law; and
  - (n) address and hours of the local customer service office.

Grantee shall also provide such information to any Subscriber upon request.

10.1.1.2 The Grantee shall deliver three (3) copies of all such subscription information to the City within three (3) days after distributing it to the first Subscriber. If the City determines that such information does not comport with Articles 8, 9 and 10 or is misleading, the City may order the Grantee to submit to any Subscriber corrected subscription information. The City assumes no liability for the subscription information by virtue of its review of such information.

10.1.2 Right of Rescission.

Anyone who requests the installation of Cable Service from the Grantee shall have the right to rescind such request at any time prior to the point in time at which physical installation upon the premises begins. Anyone who requests a particular service from the Grantee shall have the same right of rescission, except that such right shall expire once the requested service is actually received by such Person.

10.1.3 Marker Showing Converter Dial Locations.

The Grantee will provide Subscribers with a dial location card for all Cable Services, and will provide a new card showing the then-current Channel lineup on an annual basis thereafter and 30 days prior to any channel changes.

10.1.4 Procedure for Installation.

10.1.4.1 Once a request for Cable Service is received, the Grantee shall specify one of the four (4) hour periods, as set forth in Article 10.1.4.2 of this Code or as otherwise expressly set forth in a License Agreement, during which the Grantee's work crew shall install the necessary equipment to receive service.

10.1.4.2 The Grantee shall provide installation services at a specific time or, at a maximum, within a four hour time block during normal business hours. The Grantee shall provide installation throughout the Service Area on a nondiscriminatory basis.

10.1.4.3 Unless a later date is requested by a potential Subscriber, the Grantee shall complete installation of service within 125 feet of existing distribution System for

any new Subscriber and any upgrade or downgrade for any existing Subscriber within seven (7) business days after any such request is received, provided that if weekend installation is requested, installation shall be completed by no later than the fourth Saturday following the date the request is received. All other installations shall be done within fifteen (15) business days unless otherwise permitted by Article 7.1.5 of this Code or otherwise agreed upon by the Subscriber and the Grantee.

## Article 10.2 Communications

### 10.2.1 Telephone Access.

The Grantee shall maintain local, toll-free and/or call collect telephone numbers and access lines for receiving requests for repair or installation services, for reporting outages and for responding to billing questions. These lines shall be available twenty-four (24) hours per day, seven (7) days per week, with an answering service or automated device answering them outside of the Grantee's business hours. The answering service or automated device shall record calls concerning billing questions, complaints, or other matters. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

### 10.2.2 Standard of Service for Telephone Access.

A telephone system shall have, at a minimum, enough incoming lines and adequate staff to process incoming calls such that each call is answered in thirty seconds or less and no caller is placed on hold for more than thirty (30) seconds. Subject to any other requirement set forth in federal law, Grantee may maintain an automated response unit to help direct calls to an appropriate customer service representative, provided that any such automated inquiry be capable of directing the caller to a customer service representative within thirty seconds after completion of the menu prompts.

### 10.2.3 Compliance.

The standards in Article 10.2.2 of this Code shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. The Grantee will not be required to acquire equipment or perform surveys to measure compliance with

the telephone answering standards unless an historical record of complaints indicate a failure to comply.

10.2.4 Facsimile Machine ("Fax"). Grantee shall maintain, twenty-four (24) hours per day and seven (7) days per week, a facsimile machine accessible via a local telephone number which Subscribers may use to convey service and repair requests to the Grantee's customer service department. Such requests received by Fax shall be processed and handled in the same manner as Subscriber service requests that are received by telephone. The Fax access lines shall be subject to the same requirements as mentioned above for telephone access, and shall be measured, similarly, on a quarterly basis.

10.2.5 Electronic Mail ("E-mail"). Grantee shall maintain, twenty-four (24) hours per day and seven (7) days per week, an E-mail address accessible via the internet which Subscribers may use to convey service and repair requests to the Grantee's customer service department. Such requests received by E-mail shall be processed and handled in the same manner as Subscriber service requests that are received by telephone. The E-mail access shall be subject to the same requirements as mentioned above for telephone access, and shall be measured, similarly, on a quarterly basis.

### Article 10.3 Billing

#### 10.3.1 The Format of a Subscriber's Bill.

##### 10.3.1.1 The bill shall:

- (a) be designed in such a way as to be clear, concise and understandable,
- (b) be fully itemized, with itemizations including, but not limited to, basic and premium services charges and equipment charges, and
- (c) clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (d) Prominently display customer service phone and fax numbers, the customer service email address, and the customer service hours of operation on all billing statements.

The Grantee may itemize costs on Subscriber bills, to the extent permitted by Section 622 of the Cable Act (47 U.S.C. §542(c)) and the FCC's rules thereunder.

10.3.1.2 The bill shall contain itemized charges for each category of Service and Equipment for which a charge is imposed (including late charges, if any), an explicit due date, the name and address of the Grantee and telephone number for the Grantee's office responsible for inquiries and billing, the telephone number specified by the City for the resolution of billing disputes, and the FCC Community Unit Identifier Number. The bill shall state the *billing period*, *amount of current billing* and appropriate credits or past due balances, if any.

10.3.1.3 The Grantee shall not charge a potential Subscriber or Subscriber for any Service or Equipment that the Subscriber has not affirmatively requested by name. A Subscriber's failure to refuse a Grantee's proposal to provide such Service or Equipment shall not be deemed to be an affirmative request for such Service or Equipment.

10.3.2 Billing Procedures.

All bills shall be rendered monthly, unless otherwise authorized by the Subscriber, or unless service was provided for less than one (1) month.

10.3.3 Bills Deemed Paid.

A bill shall be deemed paid by a Subscriber when payment is received at Grantee's local customer service office or any bill collection center designated by the Grantee, or, if mailed, is received at the address the Grantee designates for payment of such bill.

Article 10.4 Equipment Provided by the Grantee

10.4.1 Types of Equipment To Be Provided.

10.4.1.1 The Grantee shall supply, at no charge, a closed caption decoder to any hearing impaired Subscriber who requests one.



10.4.1.2 The Grantee shall comply with all rules and regulations promulgated by the FCC pursuant to Section 624A of the Cable Act (47 U.S.C. § 544a).

10.4.2 Terms for Rental and Loaner Equipment.

10.4.2.1 The Grantee may require deposits on certain Equipment it provides to Subscribers, provided that all such deposits shall be placed in an interest bearing escrow account for the Subscribers, which deposit shall bear a reasonable interest rate, and provided further, that there shall be no discrimination among or between Subscribers in either the requirement for or the amount of any deposit.

10.4.2.2 For billing purposes, the return of rental Equipment shall be deemed to have taken place on the day such equipment is returned. All deposits, along with accrued interest, shall be returned within five (5) business days after the Equipment has been returned.

Article 10.5 Outage Correction and Repair Service

10.5.1 Interruption of Service.

The Grantee shall exercise its best efforts to limit any scheduled interruption of any Cable Service for any purpose to periods of minimum non-peak use. Except in emergencies or incidents requiring immediate action, the Grantee shall provide the City and all affected Subscribers with prior notice of scheduled service interruptions if such interruptions will last longer than thirty (30) minutes. For any other scheduled service outage, the Grantee must give notice electronically by placing an alphanumeric message on an information Channel or similar Channel on the System from time to time and at least once an hour, at least forty-eight (48) hours before the interruption of service occurs, unless the City authorizes the provision of shorter notice either in the License Agreement or on a case-by-case basis.

10.5.2 Time Periods by Which Outages Must Be Corrected and Repairs Made.

10.5.2.1 The Grantee shall maintain adequate repair and maintenance crews so as to be able to begin working on any reception problem or other service problem of either picture, or sound quality, including any outage of sound and/or picture, on any Channel except for a

problem caused by an intentional, wrongful act of the Subscriber or by the Subscriber's own equipment which was not supplied by the Grantee, promptly and in no event later than 24 hours after the Grantee either receives a request for repair service or the Grantee learns of it. For purposes of this Code, "reception problem" shall constitute reception that an affected Subscriber reasonably determines is unsatisfactory, unless the Grantee can demonstrate that the Signals transmitted to such Subscriber are in compliance with the FCC's technical signal quality standards (47 C.F.R. § 76.601 et seq.).

10.5.2.2 The Grantee shall maintain, at all times, an adequate repair and service force in order to satisfy its obligations pursuant to the foregoing Article 10.5.2.1. In order to satisfy its obligations in cases where it is necessary to enter upon a Subscriber's premises to correct any reception problem or other service problem, the Grantee shall make available service calls continuously at a specific time or, at a maximum, a four hour time block during normal business hours.

10.5.2.3 In no event shall the Grantee cancel any scheduled service call after the close of business on the business day prior to the scheduled time for the service call, except in circumstances beyond the Grantee's control.

10.5.3 Failure To Meet Time Periods May Be Excused.

The Grantee's failure to correct outages or to make repairs within the stated time periods shall be excused in the following circumstances:

- (a) if the Grantee could not reasonably obtain access to the Subscriber's premises; or
- (b) if the City, acting reasonably, agrees with the Grantee that correcting such outages or making such repairs was not reasonably possible within the allotted time period.

10.5.4 Service Calls To Be Provided on a Nondiscriminatory Basis.

The Grantee shall provide all service calls throughout the Service Area on a nondiscriminatory basis.

Article 10.6 Subscriber Complaints

10.6.1 Complaints.

For the purposes of this Code, "complaint" shall mean any written communication by a Subscriber or oral communication by a Subscriber reduced to writing, including to a computer form, expressing dissatisfaction with any non-programming aspect of the Grantee's business or operation of the System.

10.6.2 Referral of Complaints from the City to the Grantee.

10.6.2.1 If the City is contacted directly about a complaint concerning the Grantee, the City shall notify the Grantee. Complaints shall be made in writing to the City Manager on a form provided by the City or in a letter containing all information required by the prescribed form.

10.6.2.2 Within seven (7) business days after being notified about the complaint, the Grantee shall issue to the City a report detailing the investigation thoroughly, describing the findings, explaining any corrective steps which are being taken and indicating that the person who registered the complaint has been notified of the resolution.

10.6.3 Complaint Records.

10.6.3.1 The Grantee shall maintain complaint records, which shall record the date a complaint is received, the name and address of the affected Subscriber, a description of the complaint, the date of resolution, and a description of the resolution.

Article 10.7 Notice

10.7.1 Notice Required.

10.7.1.1 The Grantee shall provide notice to the City and all Subscribers of any change in any fee, charge, deposit, term or condition. Such notice shall be provided no later than thirty (30) days prior to the effective date of any such change. All notices required by this Article 10.7.1.1 shall specify, as applicable, the service or

services affected, the new rate, charge, term or condition, the effect of the change, and the effective date of the change. Such notice shall also state, unless the change was subject to review and approval of the City, that due to federal regulation, the City does not regulate changes in rates, fees, charges, deposits, terms or conditions.

- 10.7.1.2 The Grantee shall provide notice, in writing, to the City and all Subscribers of any change in any Channel assignment or in any Service provided over any such Channel. Such notice shall be provided no later than thirty (30) days' notice to the City, and thirty (30) days' notice to the Subscribers prior to the effective date of any such change.

Article 10.8 Termination of Service and Disconnection

10.8.1 Notice of Termination of Service.

The Grantee may terminate service to any Subscriber whose bill has not been paid after it becomes delinquent, so long as the billing dispute resolution procedures have not been initiated, and provided termination shall not be effected until thirty (30) days after the due date of the charges and the Grantee shall have provided prior written notice to the Subscriber of the intent to disconnect.

10.8.2 Resubscription to Cable Service.

The Grantee shall not refuse to serve a former Subscriber whose service was terminated, so long as all past bills and late charges have been paid in full. The Grantee may not charge such terminated Subscriber any fee(s) not applied to former Subscribers who voluntarily terminated service.

10.8.3 Scheduling Appointments.

The Grantee shall provide Subscribers with a four (4) hour time period during which its work crew shall visit the Subscriber's premises to disconnect service and to remove any Equipment.

10.8.4 Restoration of Subscriber Premises.

The Grantee shall ensure that the subscriber's premises are restored to their original condition if damaged by the Grantee's employees or

agents in any respect in connection with the installation, repair or disconnection of Cable Service.

10.8.5 Length of Time to Disconnection.

If disconnection of Service occurs at the Subscriber's written or oral request, then, for billing purposes, it shall be deemed to have occurred three (3) days after the Grantee receives the request for disconnection unless (a) it in fact occurs earlier or (b) the Subscriber requests a longer period.

Article 10.9 Credits

10.9.1 Grounds.

As a result of the Grantee's failure to comply with these customer service standards, the Grantee shall provide to each affected Subscriber or potential Subscriber, as applicable, the following credits:

- (a) for a failure of the Grantee's crew to arrive at the Subscriber's premises within the promised four (4) hour period for any installation service, as provided in Article 10.1.4.2 of this Code, a credit resulting in free installation;
- (b) for a failure of the Grantee to complete installation of service within the scheduled time period provided for in Article 10.1.4.3, unless otherwise excused, a credit resulting in free installation;
- (c) for any reception problem, including any outage of sound and/or picture on any Channel, as defined in Article 10.5.2.1, or for any other service problem which remains unrepaired for more than twenty-four (24) hours after either the Grantee receives from the Subscriber a request for repair service (provided that, to the extent access to the Subscriber's premises is required to effect such repair, the Subscriber has granted the Grantee such access) or the Grantee learns of such problem, a minimum credit in an amount equal to one-thirtieth (1/30) times the total bill for Cable Services of such Subscriber for the preceding billing period, for each twenty-four (24) hour period during which such reception problem persists for at least four (4) hours;
- (d) for a failure of the Grantee's crew to arrive to correct any outage or make any repair during the stated time

period, as specified in Article 10.5.2.2 (except where such failure is excused by Article 10.5.3 or except where such crew is no longer required due to a repair effected in a nearby portion of the System, in which case the Subscriber shall be notified by telephone that a visit to such Subscriber's residence is no longer necessary), a credit in an amount equal to the total number of days such Subscriber does not have service; and

- (e) for the improper termination of service to a Subscriber, free reconnection and a credit in an amount equal to all charges billed to such Subscriber for a period equal to the total number of days such Subscriber does not have service; and
- (f) for failure of the Grantee's crew to arrive at the Subscriber's premises and complete the disconnect and recovery of equipment within the promised four (4) hour period for any disconnect appointment for service, as provided in Article 10.8.3. of this Code, a credit in an amount equal to the Grantee's standard installation charge.

10.9.2 Purpose.

Each of the foregoing occurrences necessitating such credits shall result in injury to such Subscribers, which injury will be difficult to ascertain and to prove. Each of the foregoing credits is a fair and reasonable compensation for such injury and such compensation constitutes liquidated damages, not a penalty or forfeiture.

10.9.3 Calculation.

For the purpose of calculating the amount of credit owed pursuant to Article 10.9.1 (c) such four (4) hour period shall be deemed to have begun at the time the outage occurred.

10.9.4 Provision.

With respect to any credit described in Article 10.9.1 (c), the Grantee shall provide a credit on each Subscriber's bill to any eligible Subscriber who makes application therefor by written or oral notice within ninety (90) days after the outage or reception problem occurred.

10.9.5 Refunds.

Refund checks shall 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 the equipment supplied by the Grantee if the service is terminated.

Article 10.10 Local Customer Service Office

Unless otherwise expressly set forth in a License Agreement, a Grantee shall maintain within the Service Area or such other convenient location approved by the City an adequately staffed customer service office that shall be open during normal business hours.

Article 10.11 Failure to Comply with These Requirements

10.11.1 Material Requirements.

Substantial failure to comply with any material requirement set forth in these customer service standards shall constitute a failure to comply with a material provision of this Code.

10.11.2 Liability for Contractors'/Subcontractors' Failure to Comply.

If the Grantee fails to take reasonable steps to ensure that its contractors, subcontractors or agents abide by these customer service standards, the Grantee shall be liable for any breach of these customer service standards committed by its contractors, subcontractors, or agents just as if the Grantee itself had committed the breach.

Article 10.12 Definitions

10.12.1 Normal Business Hours.

The term "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/or some weekend hours.

10.12.2 Normal Operating Conditions.

The term "normal operating conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee 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.

**Article 11  
REGULATION AND INSPECTION**

Article 11.1 City's Right of Regulation and Inspection

The City shall have the right to regulate, and periodically inspect the construction, operation, maintenance and upgrade of the System, and all parts thereof, in accordance with the provisions of this Code, the License Agreement and applicable law, including the City's police power.

Article 11.2 Periodic Reports

Quarterly, or more often at the request of the City, the Grantee shall promptly submit to the City such reasonable information as the City may request regarding the Grantee, its compliance with any term or condition of this Code and the License Agreement, with respect to the System or its operation, any Service distributed over the System, or any activity or function associated with the production or distribution of any Service over the System.

Article 11.3 Grantee to Maintain Books, Records and Files

11.3.1 Books and Records.

Throughout the term of the License Agreement, the Grantee shall maintain in the Service Area, or make available in the Service Area within fifteen (15) business days after the City's request, or such other time period agreed to by the City, complete and accurate books of account and records regarding the Grantee's ownership and operation of the System and the provision of Services over the System, in a manner reasonably acceptable to the City, including without limitation, books of account and records adequate to enable the Grantee to demonstrate that it is, and throughout the term of the Agreement has



been, in compliance with the Agreement and this Code. All such documents pertaining to financial matters which may be the subject of an audit by the City shall be retained by the Grantee for a minimum of two (2) years following termination of the License Agreement.

11.3.2 Maps.

All Grantees shall maintain up-to-date route maps showing the location of trunk and distribution lines. A copy of all such maps shall be made available to the City in the Service Area within thirty (30) calendar days after the City's request or such other time period requested or agreed to by the City.

11.3.3 File for Public Inspection.

Throughout the term of the Agreement, the Grantee shall maintain, in a file available for public inspection during normal business hours, in the Service Area, those documents required pursuant to the FCC's rules and regulations.

11.3.4 Performance Evaluation.

Upon the City's request, but not prior to two years after the license origination date and not more frequently than every two years, the Grantee shall prepare a status presentation to provide information to the City regarding system performance, customer service satisfaction, and future system and programming planning. If, upon evaluating the status presentation contents, the City determines that additional information is needed to complete the evaluation, the Grantee shall provide additional relevant data.

Should the City determine that, based on the presentation and expressed community concerns, unsatisfactory or deficient quality or quantity of Cable Service or customer service is being provided, then the Grantee and the City shall enter into good faith negotiations to consider and determine a course of action to correct and improve service.

Nothing in this section shall be read to prohibit the City from requesting periodic reports pursuant to Article 11.2

11.3.5 Other Documents.

Copies of all petitions, applications, communications and reports submitted by a Grantee to the FCC, Securities and Exchange

Commission, or any other federal or state regulatory commission or agency, other than the Internal Revenue Service or the Arizona Department of Revenue, having jurisdiction over any matters affecting cable operations authorized pursuant to the License, shall be provided to the City if requested by the City. A copy of any written documentation between a Grantee and any public utility providing for the use of any facilities of the public utility by the Grantee, including, but not limited to poles, lines or conduits, shall also be provided to the City within fifteen (15) business days of the City's request.

Article 11.4 City's Rights of Inspection and Audit

11.4.1 Right of Inspection -- General.

Upon notice to the Grantee, the City or its designated representatives, shall have the right to examine, for the purpose of verifying Grantee compliance with the terms of this Code and its License Agreement, in the Service Area or other location agreeable to the City, all books and records pertaining to the Grantee's or any Affiliated Person's ownership or operation of the System or to the Grantee's or Affiliated Person's provision of Services over the System. Further, during normal business hours and upon notice to the Grantee, the City or its designated representatives may inspect and examine any other aspect of the System, *including facilities and equipment thereof.*

11.4.2 Treatment of Proprietary Information.

Access by the City to any of the documents, records or other information covered by this Article 11 or Articles 2.2, 2.4, 2.6.1, 4.1.3, or 6.1.6 shall not be denied by the Grantee on the grounds that such documents, records or information are alleged by the Grantee to contain proprietary information, provided that this requirement shall not be deemed to constitute a waiver of the Grantee's right to assert that the proprietary information contained in such documents, records or other information, should not be disclosed.

If the City concurs with the Grantee's assertion regarding the proprietary nature of such information, the City will not disclose such information to any Person, unless required by a court of competent jurisdiction.

If the City does not concur with the Grantee's assertion, then the Grantee shall promptly provide such documents, including the alleged proprietary portion thereof, to the City, or alternatively, may petition a

court of competent jurisdiction to determine the validity of the Grantee's assertion, provided that the Grantee shall not be required to provide the proprietary portion thereof during the pendency of any court challenge to such provision.

Nothing herein shall require Grantee to disclose Subscriber information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law.

At the election of the City, and in its sole discretion, the City may inspect and review, without copying or retaining any reproduction thereof, information deemed by Grantee to be competitively sensitive.

11.4.3 City May Conduct Periodic Compliance Audit and Hearings.

The City may conduct a full compliance audit and hold public hearings at any time during the term of the License Agreement, provided it gives the Grantee written notice ten (10) business days in advance of the commencement of such audits and associated hearings. During such audits and hearings, the Grantee shall fully cooperate with the City and shall provide such information and documents as the City may need to reasonably perform the review.

11.4.4 Public Notice.

Minimum public notice of any public meeting relating to a License Agreement or Grantee shall meet any Arizona State law standards and shall be by publication, at the Grantee's expense, once in a local newspaper of general circulation at least five (5) days prior to the meeting and by announcement on each access channel on the Grantee's System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days prior to the meeting.

**Article 12  
GENERAL PROVISIONS**

Article 12.1 Severability

If any Article, subsection, sentence, clause, phrase or other portion of this Code is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the

remaining portions hereof, which other portions shall continue in full force and effect.

Article 12.2 Delegation

The City Council shall have the right to delegate and re-delegate, and to revoke any such delegation or re-delegation, from time to time, any of its administrative rights or obligations under this Code to any body, organization or official of the City. Any such delegation, re-delegation or revocation, no matter how often made, shall not be deemed an amendment to this Code or to require the consent of any applicant for a License or Grantee. The City Council may also establish and appoint one or more advisory boards, with such duration and such number of members as the City Council shall determine, to advise it on such of the matters which are the subject of this Code.

**Article 13  
RIGHTS AND REMEDIES**

Article 13.1 Failure to Comply with Application Requirements

Should an applicant fail to comply with any of the application requirements of this Code, the City Council shall return the application to applicant.

Article 13.2 Rights and Remedies for Other Violations of Code or License Agreement

The City shall have the specific rights and remedies set forth in this Article 13 for violation of this Code or a License Agreement. These rights and remedies are in addition to any and all other rights or remedies now, or hereafter, available to the City to enforce the provisions of this Code and any License Agreement, and will not be deemed waived by the exercise of any other right or remedy. The exercise of any such right or remedy by the City shall not release a Grantee from its obligations or any liability under its License Agreement, except as expressly provided for in the License Agreement or as necessary to avoid duplicative recovery from or payments by the Grantee.

Article 13.3 Events of Default

13.3.1 Grounds.

An Event of Default shall include, but shall not be limited to, any of the following acts or failures to act by a Grantee:

- (a) Any substantial failure to comply with any material provision of this Code or a License Agreement that is not cured after notice and within the time period permitted pursuant to this Article 13.3.3;
- (b) The occurrence of any event which may reasonably lead to the foreclosure or other similar judicial or nonjudicial sale of all or any material part of the Cable System;
- (c) The condemnation by a public authority other than the City, or sale or dedication under threat or in lieu of condemnation, of all or any part of the Cable System, the effect of which would materially frustrate or impede the ability of a Grantee to carry out its obligations, and the purposes of this Code and its License Agreement;
- (d) In the event that the Grantee shall suspend or discontinue its business;
- (e) If there shall occur any denial, forfeiture or revocation by any federal, state or local governmental authority of any authorization required by law or the expiration without renewal of any such authorization, and such events either individually or in the aggregate, materially jeopardize or could reasonably be expected to materially jeopardize the Cable System or its operation;
- (f) A persistent failure by a Grantee to comply with any of the provisions, terms or conditions of this Code or a License Agreement or with any rules, regulations, orders or other directives of the City after having received notice of a failure to comply;
- (g) The Grantee fails to restore Service after forty-eight (48) consecutive hours to a substantial part of the Cable System, except in the case of Service interruptions the cause of which were not within Grantee's reasonable control and where Grantee is unable to restore Service using its best efforts; or
- (h) Any misstatement or omission of material fact in the application or any report required by the Code or the License Agreement.

13.3.2 City Action Upon Occurrence of Event of Default.

Upon the occurrence of an Event of Default, then, in accordance with the procedures provided in Article 13.3.3, the City may, at any time:

- (a) Require the Grantee to take such actions as the City deems reasonably appropriate in the circumstances to

- ensure compliance with the License Agreement or this Code; and/or
- (b) Seek money damages from the Grantee as compensation for such Event of Default; and/or
- (c) Seek to obtain the appointment of a court-appointed trustee or similar Person to take any actions which the City deems appropriate in the circumstances; and/or
- (d) Revoke the License by termination pursuant to this Article 13, and or
- (e) Exercise the remedies set forth in Articles 13.7 and 13.8.

13.3.3 Breach Procedures.

The City shall exercise the rights provided in Article 13.3.2 in accordance with the procedures set forth in a License Agreement. In the event a License Agreement does not set forth default procedures, the Grantee shall be subject to the default procedures set forth below:

- (a) The City Manager shall notify the Grantee, in writing, of an alleged Event of Default, which notice shall specify the alleged Event of Default with reasonable particularity. The Grantee shall, within thirty (30) calendar days after receipt of such notice or such longer period of time as the City Manager may specify in such notice, either cure such alleged Event of Default if such Event can be cured, or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged Event of Default or state that such alleged Event of Default will be cured and set forth the method and time schedule for accomplishing such cure.
- (b) The City Manager shall determine:
  - (1) whether an Event of Default has occurred;
  - (2) whether such Event of Default is excusable; and
  - (3) whether such Event of Default has been cured or will be cured by the Grantee.
- (c) If the City Manager determines that an Event of Default has occurred and that such Event of Default is not excusable and has not been or will not be cured by the Grantee in a manner and in accordance with a schedule reasonably satisfactory to the City Manager, then the City Manager shall prepare a written report which may

recommend the action to be taken by the City Council. The City Council shall provide notice and a copy of such report to the Grantee. In the event that the City Council determines that such Event of Default has not occurred, or that such Event of Default either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City Council, or that such Event of Default is excusable, such determination shall conclude the investigation.

- (d) If the City Council determines that such Event of Default has occurred, and that such Event of Default has not been and will not be cured in a manner and in accordance with a schedule reasonably satisfactory to the City Council, and that such Event of Default is not excusable, then the City may take any of the actions provided in Article 13.3.2.

#### Article 13.4 Termination

In the event of any termination of the License Agreement, whether by expiration, revocation or otherwise, the City may:

- (a) direct the Grantee to operate the System pursuant to the provisions of this Code and the License Agreement and such additional terms and conditions as are agreeable to the City and the Grantee for a period of up to twelve (12) months;
- (b) authorize any other Person to operate the System upon such terms and conditions as are agreeable to the City and the Grantee; or
- (c) order the Grantee to cease all construction and operational activities in a prompt and workmanlike manner.

#### Article 13.5 City's Right to Order Removal or to Approve a Transfer of the Cable System

##### 13.5.1 Removal.

In addition to its rights under Article 13.4, upon any termination, the City may issue a removal order directing a Grantee to remove, at the Grantee's sole cost and expense, all or any portion of the Cable System from all Streets and other public or non-public property within the Service Area, subject to the following:

- (a) in removing the Cable System, or any part thereof, the Grantee shall, at its own expense, refill and compact any excavation it makes, and shall leave the Streets

- and other property, including utility cables, wires and attachments, in as good condition as that prevailing prior to the Grantee's removal of the System;
- (b) any liability insurance and indemnity provisions shall remain in full force and effect during the period in which the Cable System is being removed and the associated repairs to the Streets and other property are being made; and
  - (c) if in the reasonable judgment of the City, the Grantee fails to substantially complete removal, including repair of the Streets and other property within twelve (12) months of the City's issuance of a removal order, the City shall have the right to authorize removal of the Cable System, at the Grantee's cost, by another Person.

Notwithstanding the foregoing, the Grantee may dispose of any portion of the Cable System not designated by the City for removal during such twelve (12) month period, provided, however, that if the Grantee fails to complete the removal of the portion(s) of the Cable System designated for removal by the City within such period, then all such portion(s) of the Cable System not disposed of and all amounts collected for any portion(s) of the Cable System disposed of by the Grantee during such period shall belong to the City, with no price due to the Grantee. Notwithstanding this Article 13.5.1, a Grantee shall not be required to remove those portions of the System that are necessary for the Grantee's continued provision of non-Cable Service, including telecommunications service, so long as the City Code or agreement by which the City permits the Grantee to use the Streets to provide non-Cable Service remains valid and in effect and the City is prohibited by state or federal law from ordering such removal.

#### 13.5.2 Transfer.

Upon any termination and as an alternative to ordering removal of the Cable System, the City may approve a transfer of ownership to a third party. Notwithstanding this Article 13.5.2, a Grantee shall not be required to transfer those portions of the System that are necessary for the Grantee's continued provision of non-Cable Service, including telecommunications service, so long as the City Code or agreement by which the City permits the Grantee to use the Streets to provide non-Cable Service remains valid and in effect and the City is prohibited by state or federal law from ordering such transfer.



13.5.3 Price.

The price to be paid to the Grantee upon a transfer approved by the City shall be pursuant to Section 627 of the Cable Act.

Article 13.6 Grantee's Obligations

In the event of any transfer or abandonment pursuant to Article 13, the Grantee shall promptly supply any transferee approved by the City with all records necessary to reflect the change in ownership and to operate and maintain the Cable System.

Article 13.7 Liquidated Damages

13.7.1 Liquidated Damages.

In accordance with Articles 13.3.2 and 13.3.3, the City may impose liquidated damages in the amounts specified below for the Grantee's failure to comply with this Code or a License Agreement:

- (a) Failure to comply with Article 2.1.2: One Thousand Dollars (\$1,000.00) per day, for each day that such failure continues;
- (b) Failure to comply/operation in violation of Article 2.1.6: Five Hundred Dollars (\$500.00) per day, for each day that such failure continues;
- (c) Failure to comply with Article 2.9.1: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (d) Failure to comply with Article 3.2.2 or 3.2.3: One Thousand Dollars (\$1,000.00) per day, for each day that such failure continues;
- (e) Failure to comply with Article 3.3.1: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (f) Failure to comply with Article 4.1.1: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (g) Failure to comply with Article 4.1.2 or Article 4.1.3: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (h) Failure to provide records as required under Article 4.1.4: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (i) Failure to pay any underpayment of license fees or

reimburse the City for its costs in compliance with Article 4.1.4: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;

- (j) Failure to comply with any requirement under Article 5: One Thousand Dollars (\$1,000.00) per day, for each day that such failure continues;
- (k) Failure to comply with any requirement under Article 6: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (l) Failure to comply with any requirement under Articles 7 and 8: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (m) Failure to comply with any requirement under Articles 9 and 10: Five Hundred Dollars (\$500.00) per day, for each day that such failure continues;
- (n) Failure to comply with any requirement under Article 11: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (o) Failure to comply with any requirement under Article 14: One Hundred Dollars (\$100.00) per day, for each day that such failure continues;
- (p) Failure to comply with any requirement under Article 13: Five Hundred Dollars (\$500.00) per day, for each day that such failure continues; and
- (q) Failure to comply with any orders of the City issued pursuant to this Code: Five Hundred Dollars (\$500.00) per day, for each day that such failure continues.

13.7.2 Each of the foregoing failures set forth in this Article shall result in injuries to the City and the residents, businesses and institutions of the City, the compensation for which will be difficult to ascertain and to prove. Such liquidated damages shall be without prejudice to any other remedies available to the City to the extent permitted by law. The foregoing amounts are liquidated damages and not a penalty or forfeiture.

13.7.3 Liquidated damages will not be imposed by the City if it finds that the failure of the Grantee to comply with this Code resulted from conditions beyond the Grantee's control. Liquidated damages may be reduced or eliminated by the City if it finds such action is in the public interest.

Article 13.8 Security Fund

13.8.1 Form and Amount.

At or prior to the execution of a License Agreement, and as a condition precedent thereto, a Grantee shall deposit with the City--in an amount satisfactory to the City--cash, an irrevocable, unconditional letter of credit or other instrument, including but not limited to, a performance bond, satisfactory to the City, or combination thereof, which letter of credit or other instrument shall in no event require the consent of the Grantee prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash and such letter of credit or other instrument shall constitute the Grantee's Security Fund.

At any time during the term of the License Agreement, the City may, in its reasonable discretion, require the Grantee to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to the License Agreement or the failure of the Grantee to perform any of its obligations pursuant to the Agreement.

13.8.2 Purposes.

The Security Fund shall serve as security for:

- (a) the faithful performance by the Grantee of all terms, conditions and obligations of this Code and the License Agreement and to cure any performance failure which can be cured through payment out of the Security Fund;
- (b) any expenditure, damage, or loss incurred by the City occasioned by the Grantee's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Code and the License Agreement;
- (c) payment of compensation set forth in this Code and the License Agreement;
- (d) the payment of premiums for the liability insurance required pursuant to this Code and the License Agreement;
- (e) any removal of the System ordered by the City;

- (f) the payment to the City of any amounts for which the Grantee is liable which are not paid by the Grantee's insurance;
- (g) the payment of any other amounts which become due to the City pursuant to this Code, the License Agreement or law;
- (h) the timely renewal of the letter of credit that constitutes the Security Fund; and
- (l) any costs, losses or damages incurred by the City as a result of a default of the Grantee's obligations under this Code or the License Agreement.

13.8.3 Replenishment.

Throughout the term of the License Agreement, or for as long as the Grantee operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Grantee shall maintain the Security Fund in the amount specified in the License Agreement. Within fifteen (15) business days after receipt of notice from the City that any amount has been withdrawn from the Security Fund, as provided in Article 13.8.4 below, the Grantee shall restore the Security Fund to the amount specified in the License Agreement, provided that said restoration obligation shall be suspended during the period of any judicial challenge by the Grantee to the propriety of said withdrawal from the Security Fund. If a court determines that said withdrawal by the City was improper, the City shall restore the improperly withdrawn amount to the Security Fund.

13.8.4 Withdrawals.

In accordance with Articles 13.3.2 and 13.3.3, the City may withdraw from the security fund appropriate amounts payable to the City, if the Grantee fails to comply with this Code in any of the following respects:

- (a) to make any payment required by this Code or the License Agreement within the time fixed herein;
- (b) to pay to the City, within fifteen (15) business days after receipt of notice, any liabilities relating to the System that are due and unpaid;
- (c) to pay to the City, within fifteen (15) business days after receipt of notice from the City, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any act or default of the Grantee; or

- (d) to comply, within fifteen (15) business days after receipt of notice from the City, with any provision of this Code or the License Agreement which the City determines can be remedied by an expenditure of an amount in the Security Fund.

The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of the Grantee to the City but only to the extent of said withdrawal.

13.8.5 Return of Security Fund.

Within one hundred twenty (120) days after the termination of the License Agreement due to the expiration of the term of the License, the Grantee shall be entitled to the return of the Security Fund, or portion thereof as remains on deposit with the City at said termination, provided that all offsets necessary to compensate the City for any uncured failure to comply with any provision of this Code or License Agreement or Event of Default have been taken by the City. Notwithstanding the foregoing sentence, if the Grantee continues to operate the System following the termination of the License Agreement, the Grantee shall not be entitled to a return of the Security Fund until one hundred twenty (120) days after the end of such continued operation.

In the event of a termination of the License Agreement for cause due to a breach of the License Agreement by the Grantee, violation of this Code, or otherwise, such Security Fund shall become the property of the City to the extent necessary to satisfy the purposes of the Security Fund as set forth in Article 13.8.2, including the covering of any costs, loss or damage incurred by the City as a result of such termination, provided that any amounts in excess of such costs, loss or damage shall be refunded to the Grantee.

**Article 14**  
**INSURANCE AND INDEMNITY**

Article 14.1 Insurance

14.1.1 Specifications.

- (a) Liability Insurance.

Throughout the term of the License Agreement, the Grantee shall, at its own cost and expense, maintain a liability insurance policy or policies that are in an acceptable form to the City, together with evidence acceptable to the City demonstrating that the premiums for said policy or policies have been paid. Such policy or policies shall be issued by companies duly licensed to do business in the State of Arizona and acceptable to the City. Such companies must carry a rating by Best of not less than "A." Such policy or policies shall insure (i) the Grantee and (ii) the City and its officers, boards, commissions, councils, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of liability of the Grantee referred to in the Code and License Agreement in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage, or such other amount set forth in the License Agreement. The foregoing minimum limitation shall not prohibit the Grantee from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, councils, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by the Grantee.

(b) Workers' Compensation.

The Grantee shall ensure its compliance with the Arizona Workers' Compensation Act and in that regard shall secure insurance to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance reasonably satisfactory to the City. The Grantee shall indemnify and hold harmless the City from any workers' compensation claims to which the Grantee may become subject during the term of the License Agreement.

(c) Other Insurance.

The Grantee shall maintain such other insurance in such amounts that may be specified in a License Agreement.

14.1.2 Maintenance.

The liability insurance policies required by Article 14.1.1 shall be maintained by the Grantee throughout the term of the License Agreement and such other period of time during which the Grantee operates or is engaged in the removal of the System.

Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew." Within forty-five (45) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Grantee shall obtain and furnish to the City replacement insurance policies in a form reasonably acceptable to the City.

14.1.3 Increased Insurance Coverage.

In the event of any changed circumstances following the effective date of a License Agreement, if the City wishes to alter the minimum limitation of the liability insurance policy or policies required in Article 14.1, then the City and the Grantee shall negotiate such alteration in good faith.

14.1.4 Liability Not Limited.

The legal liability of the Grantee and any Affiliated Person to the City and any Person for any of the matters which are the subject of the liability insurance policies required by this Article 14.1, including, without limitation, the Grantee's indemnification obligations set forth in this Code and License Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Grantee.

Article 14.2 Liability and Indemnity

14.2.1 No Liability for Damages.

In addition to all rights granted under Section 635A of the Cable Act (47 U.S.C. § 555a), the City, its officers, employees, agents, attorneys, consultants and independent contractors shall have no liability to the Grantee, any Affiliated Person or any other Person for any incidental, consequential, punitive, or other damages as a result of the exercise of any right of the City pursuant to this Code, a

License Agreement or applicable law, including, without limitation, the rights of the City to approve or disapprove the grant, termination, amendment, renewal or transfer of the License Agreement or the License, or to otherwise modify all or any part of this Code, the License Agreement or the License. Any relief to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

14.2.2 Indemnification of the City.

The Grantee shall:

- (a) defend, indemnify, and hold harmless the City, its officers, employees, and *authorized agents from and* against all liabilities, special, incidental, consequential, punitive, and all other damage, cost, and expense (including reasonable attorneys' fees) arising out of or in connection with:
  - (1) the award of the License;
  - (2) the construction, operation, maintenance, repair, upgrade or removal of, or any other action or event with respect to, the System or any activity or function associated with the production or distribution of any Service over the System; or
  - (3) the distribution of any Service over the System; and
- (b) cooperate with the City, by providing such nonfinancial assistance as may be requested by the City, in connection with any claim arising out of or in connection with the selection of Grantees for, or the negotiation or award of, the License Agreement.

14.2.3 Settlement.

Unless otherwise expressly set forth in a License Agreement, if the City is a party to litigation, a Grantee shall not make or enter into any compromise or settlement of any claim, term, cause of action, suit or other proceeding arising under Article 14.2.2 in a manner adverse to the City without first obtaining the written consent of the City.



14.2.4 Intervention.

Unless otherwise expressly set forth in a License Agreement, the City shall have the right of intervention in any suit or proceeding involving the Grantee's License or Agreement, and the Grantee shall not oppose such intervention by the City.

**Article 15**  
**APPLICATION TO EXISTING LICENSES**

Article 15.1 This Code as amended shall be applicable to all cable Licenses issued by the City, whether or not such Licenses were issued prior to the effective date of this Code as amended.

**Article 16**  
**POLICE POWERS AND INTERPRETATION**

Article 16.1 In accepting a License, the Grantee must acknowledge that its rights under the License Agreement are subject to the police power of the City to adopt and enforce general resolutions necessary for the health, safety and welfare of the public, and it must agree to comply with all applicable laws, ordinances and resolutions enacted by the City pursuant to such power.

Article 16.2 The provisions of this Code will apply to a License Agreement as if fully set forth in the License Agreement, and, in the event of a conflict between the terms of the Code and the License Agreement, the terms of the Code will control.

Notwithstanding the foregoing, the Council may, on an individual basis and for good cause, issue Licenses and enter into License Agreements that contain terms and conditions that differ from the provisions of this Code, or grant a waiver of, or permit compliance on terms and conditions different than that set forth in, any provision of this Code. "Good Cause," for purposes of this Article 16.2, shall be demonstrated where the Council approves the grant to:

- (a) a Grantee which will operate during the License term a small Cable System, of a License and License Agreement that contains terms and conditions that reasonably reduce the administrative burdens and cost of compliance for such Cable System if the Grantee has demonstrated that it would not be economically viable to operate the Cable System in the City without such terms and conditions; or

- (b) a Grantee of a License and License Agreement that bestows benefits and imposes burdens which, on balance, create overall economic comparability between the terms and conditions in such License and License Agreement and the terms and conditions imposed by this Code. For purposes of this Article 16.2, a "small Cable System" shall mean a Cable System which serves 1,000 or fewer subscribers from its headend or a Cable System which the Grantee demonstrates has characteristics similar to Cable Systems which serve 1,000 or fewer subscribers from its headend that would not make it economically viable to operate the Cable System in compliance with all the terms and conditions under this Code.

Article 16.3 A License Agreement will be controlled by the Cable Act, other federal law, state laws, and all applicable local laws, ordinances, and regulations.

**Article 17**  
**RESERVATION OF USE OF CERTAIN GRANTEE FACILITIES**

Article 17.1 The City shall have the right, during the term of the License, to install and maintain upon the poles of the Grantee any wire and pole fixtures that do not unreasonably interfere with the cable operations of the Grantee.

**Article 18**  
**COMPLIANCE WITH STATE AND FEDERAL LAWS**

Article 18.1 A Grantee shall at all times comply with all laws and regulations of the state and federal governments or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to be in conflict with the terms of a License Agreement, this Code or of any law or regulation of the City, the Grantee shall comply with the License Agreement, this Code, and any law or regulation of the City to the extent not prohibited by law.

**Article 19**  
**CONFLICT**

Article 19.1 Except to the extent otherwise set forth herein, all ordinances or parts of ordinances in conflict with the provisions of this Code are hereby repealed.