

Sec. 4-1, Telephone Contract

AN ORDINANCE WHEREBY THE CITY OF TERRELL HILLS, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE THAT, FOR THE PURPOSE OF OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL MAINTAIN AND CONSTRUCT ITS POLES, WIRES, ANCHORS, FIBER, CABLES, MANHOLES, CONDUITS AND OTHER PHYSICAL PLANT AND APPURTENANCES IN, ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, HIGHWAYS, ALLEYS, SIDEWALKS, BRIDGES OR PUBLIC PROPERTY IN SAID CITY; PRESCRIBING THE ANNUAL COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHTS-OF-WAY AND THE PERFORMANCE OF CERTAIN CONSTRUCTION WORK ON PUBLIC RIGHTS-OF-WAY FOR THE TELEPHONE COMPANY'S TELECOMMUNICATIONS BUSINESS; PROVIDING AN INDEMNITY CLAUSE; SPECIFYING GOVERNING LAWS; PROVIDING FOR A RELEASE OF ALL CLAIMS UNDER PRIOR ORDINANCES; PROVIDING FOR FUTURE CONTINGENCIES; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS ORDINANCE BY THE TELEPHONE COMPANY; AND PROVIDING FOR A TERM AND AN EFFECTIVE DATE.

WHEREAS, Southwestern Bell Telephone Company (hereinafter referred to as the "TELEPHONE COMPANY") is now and has been engaged in the telecommunications business in the State of Texas and in furtherance thereof, has erected and maintained certain items of its physical plant in the City of Terrell Hills, Texas (hereinafter referred to as the "CITY") for many years pursuant to such rights as have been granted it by and under the laws of the State of Texas, and subject to the reasonable exercise of the police powers granted by and under said laws to the CITY; and

WHEREAS, the TELEPHONE COMPANY has operated its telecommunications business in the CITY under successive ordinances of the CITY, the last of which was Ordinance Number 83, adopted August 29, 1962, which provided compensation to the CITY for the superintendence of that agreement based upon a percentage of gross receipts received by the TELEPHONE COMPANY from certain local services rendered within the corporate limits of the CITY; and

WHEREAS, it is recognized by the parties that changes in the telecommunications industry, changes in technology, changes in state and federal law, and changes in the accounting practices mandated by the Uniform System of Accounts promulgated by the Federal Communications Commission ("FCC"), along with regulatory requirements of the Texas Public Utility Commission ("PUC"), have caused the traditional method of determining the amount of compensation to municipalities to become administratively impractical for telecommunications utilities. In order to resolve these issues in a manner satisfactory to both the CITY and the TELEPHONE COMPANY, the CITY and the TELEPHONE COMPANY have chosen the method of determining the amount of compensation provided for in this Ordinance to eliminate the expense and time related to audits, to

achieve administrative simplicity, to provide the CITY with predictable revenues and an opportunity for growth and to avoid the expense and delays of litigation which could be necessary to resolve any issues in controversy between the parties; and

WHEREAS, it is to the mutual advantage of both the CITY and the TELEPHONE COMPANY that an agreement should be entered into between the TELEPHONE COMPANY and the CITY establishing the conditions under which the TELEPHONE COMPANY shall maintain and construct its physical plant in the CITY in the future;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL HILLS, TEXAS, THAT:

SECTION 1 - PURPOSE

Pursuant to the laws of the State of Texas, the CITY Charter and this Ordinance, the TELEPHONE COMPANY has the NON-EXCLUSIVE right and privilege to USE the public RIGHTS-OF-WAY in the CITY for the operation of a telecommunications system subject to the restrictions set forth herein. The TELEPHONE COMPANY may USE such RIGHTS-OF-WAY for its telecommunications FACILITIES. The TELEPHONE COMPANY'S FACILITIES and TRANSMISSION MEDIA used in or incident to the provision of telecommunications service and to the maintenance of a telecommunications business by the TELEPHONE COMPANY in the CITY shall remain as now constructed, subject to such changes as under the conditions prescribed in this Ordinance may be considered necessary to the public health and safety by the CITY in the exercise of its lawful police powers and such changes and extensions as may be considered necessary by the TELEPHONE COMPANY in the pursuit of its telecommunications business. The terms of this Ordinance shall apply throughout the CITY, and to all operations of the TELEPHONE COMPANY within the CITY, and shall include all operations and FACILITIES used in whole or in part in the provision of telecommunications services in newly annexed areas upon the effective date of any annexation.

SECTION 2 - ADDITIONAL AUTHORITY REQUIRED

The TELEPHONE COMPANY is not authorized to provide cable television service as a cable operator in the CITY under this Ordinance, but must first obtain a franchise from the CITY for that purpose, under such terms and conditions as may be required by law.

SECTION 3 - DEFINITIONS

Whenever used in this Ordinance, the following words and terms shall have the definitions and meanings provided in this Section:

(a) FACILITIES: all TELEPHONE COMPANY duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures and appurtenances and all associated TRANSMISSION MEDIA.

(b) USE: any TELEPHONE COMPANY acquisition, construction, reconstruction, maintenance or operation of any FACILITIES in, over, under, along, through or across the public RIGHTS-OF-WAY for any purpose whatsoever.

(c) CITY: The City of Terrell Hills, Texas.

(d) RIGHTS-OF-WAY: all present and future streets, avenues, highways, alleys, bridges and public property within the city limits of the CITY.

(e) DIRECTION OF THE CITY: all ordinances, laws, rules, regulations, and charter provisions of the CITY now in force or that may hereafter be passed and adopted which are not inconsistent with this Ordinance.

(f) TRANSMISSION MEDIA: all TELEPHONE COMPANY cables, fibers, wires or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other purposes.

(g) NON-EXCLUSIVE: no rights agreed to in this Ordinance by the CITY shall be exclusive, and the CITY reserves all rights not expressly conveyed to TELEPHONE COMPANY hereby, including, without limitations, the right to grant franchises, licenses, easements or permissions to use the public RIGHTS-OF-WAY within the CITY to any person or entity as the CITY, in its sole discretion, may determine to be in the public interest.

(h) TELEPHONE COMPANY: Southwestern Bell Telephone Company.

SECTION 4 - TERM

This Ordinance shall continue for a period of three (3) years from the effective date hereof. If the parties have not been able to reach agreement upon a new ordinance to replace this Ordinance by the time such term expires, the CITY, at its option, may extend the term hereof for an additional two (2) years. Said option may be exercised by an ordinance being adopted by the CITY.

SECTION 5 - SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUITS

All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that the same will not unduly interfere with ordinary travel on the streets, alleys or sidewalks. The location and route of all poles, stubs, guys, anchors, conduits, fiber, cables and other FACILITIES placed and constructed by the TELEPHONE COMPANY in the construction and maintenance of its telecommunications system in the CITY shall be subject to the lawful, reasonable and proper control and DIRECTION OF THE CITY.

SECTION 6 - ATTACHMENTS TO POLES AND SPACE IN DUCTS

Nothing contained in this Ordinance shall be construed to require or permit any pole attachments for electric light or power wires or communications facilities or other systems not provided by the TELEPHONE COMPANY to be attached to the TELEPHONE COMPANY'S poles or other FACILITIES or placed in the TELEPHONE COMPANY'S conduit. If the CITY desires pole attachments for electric light or power wires or communications facilities or other systems not provided by the TELEPHONE COMPANY, or if the CITY desires to place communications facilities or systems not provided by the TELEPHONE COMPANY in any TELEPHONE COMPANY duct, then a further separate, noncontingent agreement shall be prerequisite to such attachment(s) or such use of any duct by the CITY. Nothing contained in this Ordinance shall obligate or restrict the TELEPHONE COMPANY in exercising its rights voluntarily to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the CITY.

SECTION 7 - STREETS TO BE RESTORED TO PRE-EXISTING CONDITION

(a) Except in an emergency, the TELEPHONE COMPANY shall not excavate any RIGHT-OF-WAY without first notifying the City Manager, and, in the case of planned construction projects, shall submit construction drawings with such notification. If approval is required it shall be given by the CITY within ten (10) working days of submittal, if the proposed excavation is in compliance with the requirements of the DIRECTION OF THE CITY. The City Manager or the City Manager's designee shall be notified as soon as practicable regarding work performed under emergency conditions, and the TELEPHONE COMPANY shall comply with any reasonable requirements of the City Manager for the restoration of the RIGHTS-OF-WAY within the CITY.

(b) The surface of any public street, avenue, highway, alley or public place disturbed by the TELEPHONE COMPANY in the construction or maintenance of its telecommunications system shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work. Should the CITY reasonably determine, within one year from the date of such restoration, that such surface requires additional restoration work to place it in as good a condition as before the commencement of the work, the TELEPHONE COMPANY shall perform such additional restoration work to the reasonable satisfaction of the CITY. No public street, avenue, highway, alley or public place shall be encumbered for a longer period than shall be reasonably necessary to execute all work.

SECTION 8 - TEMPORARY REARRANGEMENT OF AERIAL WIRES

Upon request, the TELEPHONE COMPANY shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the TELEPHONE COMPANY may require payment in advance. The TELEPHONE COMPANY shall

be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.

SECTION 9 - TREE TRIMMING

The right, license, privilege and permission is hereby granted to the TELEPHONE COMPANY, its contractors and agents, to trim trees upon and overhanging the streets, avenues, highways, alleys, sidewalks and public places of the CITY so as to prevent the branches of such trees from coming in contact with the aerial wires, fiber or cables of the TELEPHONE COMPANY, and when so directed by the CITY, said trimming shall be done under the supervision and DIRECTION OF THE CITY or of any CITY official to whom said duties have been or may be delegated. In non-emergency situations, three (3) days notice shall be given to the CITY where major new aerial facilities are being constructed which require trimming work to be performed by the TELEPHONE COMPANY.

SECTION 10 - INDEMNITY

The TELEPHONE COMPANY shall indemnify and hold the CITY harmless from all costs, expenses (including attorney's fees) and damages to persons or property arising directly or indirectly out of the construction, maintenance or operation of the TELEPHONE COMPANY'S FACILITIES located within the public RIGHTS-OF-WAY found to be caused solely by the negligence of the TELEPHONE COMPANY. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the TELEPHONE COMPANY and the CITY.

SECTION 11 - ADMINISTRATION OF ORDINANCE

(a) The CITY may, at any time, make inquiries pertaining to this Ordinance and the TELEPHONE COMPANY shall respond to such inquiries on a timely basis by providing information which is prepared, maintained and available in the ordinary course of business.

(b) Copies of specifically identified petitions, applications, communications and reports submitted by the TELEPHONE COMPANY to the Federal Communications Commission or the Public Utility Commission of Texas shall be provided to the CITY upon request.

(c) The CITY may establish, after reasonable notice, such rules and regulations as may be appropriate for the administration of this Ordinance and the construction of the TELEPHONE COMPANY'S FACILITIES on CITY property to the extent permitted by law.

SECTION 12 - COMPENSATION TO THE CITY

(a) As compensation for the use, occupancy, oversight, supervision and regulation of the CITY'S RIGHTS-OF-WAY, and in lieu of and in full compensation for any lawful tax or license or charge or RIGHT-OF-WAY permit fee or inspection fee, whether charged to the TELEPHONE COMPANY or its contractor(s), or any RIGHT-OF-WAY easement or street or alley rental or franchise tax or other character of charge for use and occupancy of the RIGHTS-OF-WAY within the CITY, except the usual general ad valorem taxes, special assessments in accordance with State law or sales taxes now or hereafter levied by the CITY in accordance with State law, the CITY hereby imposes a Charge upon the Gross Receipts (as hereinafter defined) of the TELEPHONE COMPANY. The amount of the Charge for the first year this Ordinance is in effect shall be \$20,900.00. For the second year the Charge shall be \$28,700.00 increased by the Growth Factor as set forth in paragraph 12(c), if applicable. For the third and subsequent years while this Ordinance remains in effect, the above Charge is subject to adjustment by application of the Growth Factor set out in paragraph 12(c). This adjustment for the Growth Factor will be made effective as of each anniversary date of this Ordinance. In no event shall the Charge for subsequent years that this Ordinance is in effect be less than the above amount stated for the second year of this Ordinance, except as provided in the case of disannexation as set forth in paragraph 12(e), or as provided in Section 16 herein.

The TELEPHONE COMPANY will, according to tariff, bill such Charge to the customers billed the customer service charges included within the term "Gross Receipts," as defined herein. Gross Receipts, for purposes of this Charge, shall include only customer service charges which meet all four of the following conditions:

(1) such charges are for TELEPHONE COMPANY services provided within the CITY; (2) such charges are billed through the TELEPHONE COMPANY'S Customer Records Information System ("CRIS"); (3) such charges are the recurring charges for the local exchange access rate element specified in the TELEPHONE COMPANY'S tariffs filed with the PUC; and (4) such charges are subject to an interstate end user common line ("EUCL") charge as imposed by the Federal Communications Commission ("FCC").

The TELEPHONE COMPANY shall adjust its billings to customers to account for any undercollection or overcollection of the Charge due the CITY.

(b) The Charge for each year shall be paid in four (4) equal payments. The dates shall be February 28, May 31, August 31 and November 30, with the first payment under this Ordinance due on the last day of the fifth month following the effective date hereof. In the event of any over or undercollection from customers at the expiration of this Ordinance, the TELEPHONE COMPANY may make a pro rata one-time credit or charge to the customer billing for affected customers who are billed for a service included within Gross Receipts, as defined in paragraph 12(a). This will be accomplished within 150 days following the date of expiration of this Ordinance. If however, it is impractical to credit any overcollection to customers, then such overcollection shall be paid to the CITY.

(c) The Growth Factor shall be calculated by dividing the TELEPHONE COMPANY'S revenues within the corporate limits of the CITY subject to state sales taxes ("Sales Tax Revenues") for the twelve month period ending three (3) months prior to the next anniversary date of this Ordinance by the Sales Tax Revenues for the twelve month period ending three (3) months prior to either the initial effective date or the preceding anniversary date of this Ordinance as applicable. The Growth Factor calculated by the method set forth in the preceding sentence, if greater than one, shall be multiplied by the current year's Charge to determine the dollar amount of the Charge for the next year. If the Growth Factor calculated above is one or less, the Charge for the next year shall be equal to the current year's Charge. The TELEPHONE COMPANY will adjust its customer billing to account for the Growth Factor calculated above.

Once the Growth Factor calculation is completed, the TELEPHONE COMPANY will provide the CITY with the Sales Tax Revenues upon which the Growth Factor calculation was based.

The CITY agrees to rely upon audits by the Texas Comptroller of Public Accounts of state sales taxes as reported by the TELEPHONE COMPANY which are performed in compliance with Sections 151.023 and 151.027 of the Texas Tax Code Annotated. The Growth Factor shall be recomputed to reflect any final, nonappealable adjustments made pursuant to an audit finding by the Texas Comptroller of an inaccuracy in the TELEPHONE COMPANY'S reports of revenues subject to state sales taxes. The Charge shall be recalculated using the Growth Factor recomputed as specified in the preceding sentence, and the recalculated Charge shall be used for all future calculations required by this Ordinance. Any overpayment or underpayment resulting from such recalculation shall be subtracted from or added to the first installment due the following year. If any overpayment or underpayment shall be due during the final year of this Ordinance, then payment shall be made as follows. In the case of overpayment by the TELEPHONE COMPANY, the CITY shall pay such overpayment to the TELEPHONE COMPANY within 150 days following the expiration of this Ordinance and, in the case of underpayment by the TELEPHONE COMPANY, the TELEPHONE COMPANY shall pay such underpayment to the CITY within 150 days following the expiration of this Ordinance.

(d) Such payments shall not relieve the TELEPHONE COMPANY from paying all applicable municipally-owned utility service charges. Should the CITY not have the legal power to agree that the payment of the foregoing Charge shall be in lieu of the taxes, licenses, charges, RIGHTS-OF-WAY permit or inspection fees, rentals, RIGHTS-OF-WAY easements or franchise taxes aforesaid, then the CITY agrees that it will apply so much of such payments as may be necessary to the satisfaction of the TELEPHONE COMPANY'S obligation, if any, to pay any such taxes, licenses, charges, RIGHTS-OF-WAY permit or inspection fees, rentals, RIGHTS-OF-WAY easements or franchise taxes.

(e) In the event that either (1) territory within the boundaries of the CITY shall be disannexed and

a new incorporated municipality created which includes such territory or (2) an entire, existing incorporated municipality shall be consolidated or annexed into the CITY, then notwithstanding any other provision of this Ordinance, the Charge shall be adjusted. To accomplish this adjustment, within thirty days following the action effecting a disannexation/annexation as described above, the CITY shall provide the TELEPHONE COMPANY with maps of the affected area(s) showing the new boundaries of the CITY.

In the event of an annexation as described above, the Charge for the CITY will be adjusted to include the amount of the payment by the TELEPHONE COMPANY to the existing incorporated municipality being annexed. In the event that the annexed municipality had no ordinance imposing a Charge or in the event of a disannexation, then the adjustment to the Charge will be calculated using the effective date of the imposition of Local Sales Taxes as determined by the Texas Comptroller of Public Accounts. The adjustment shall be the percent increase/decrease in the TELEPHONE COMPANY'S Gross Receipts as defined herein for the CITY for the first calendar month following the Local Sales Tax effective date compared to the last month prior to such effective date. This adjustment to the Charge will be made on the first day of the second month following the Local Sales Tax effective date and the adjusted Charge shall be prorated from that date through the remainder of the payment year. The Charge as adjusted shall be used for all future calculations required by this Ordinance.

SECTION 13 - ASSIGNMENT OF ORDINANCE

This Ordinance and any rights or privileges hereunder shall not be assignable to any other entity without the express consent of the CITY. Such consent shall be evidenced by an ordinance which shall fully recite the terms and conditions, if any, upon which such consent is given.

SECTION 14 - MUTUAL RELEASES

The CITY hereby fully releases, discharges, settles and compromises any and all claims which the CITY has made or could have made arising out of or connected with Ordinance Number 83, adopted August 29, 1962, and renewed or extended from time to time thereafter, and its predecessor ordinances, if any, (hereinafter referred to collectively as "Ordinance 83"). This full and complete release of claims for any matters under Ordinance 83 shall be for the benefit of Southwestern Bell Telephone Company; its parent; its affiliates; their directors, officers and employees; successors and assigns; and includes any and all claims, actions, causes of action and controversies, presently known or unknown, arising directly or indirectly out of or connected with the TELEPHONE COMPANY'S obligations to the CITY pursuant to the provisions of Ordinance 83. Southwestern Bell Telephone Company, its parent, its affiliates, successors and assigns hereby fully release, discharge, settle and compromise any and all claims, actions, causes of action or controversies heretofore made or which could have been made, known or unknown, against the CITY, its officers or its employees, arising out of or connected with any matters under Ordinance 83.

It is the intent of the CITY and the TELEPHONE COMPANY to enter into the foregoing mutual releases in order to reach a compromise that is acceptable to both the CITY and the TELEPHONE COMPANY. This Ordinance and the mutual releases set forth in this Section represent a compromise of each party's claims as well as each party's defenses, and is not intended to be and is not an admission of liability or vulnerability by either party to the other with respect to either the claims or the defenses asserted against the other.

SECTION 15 - REPEAL OF CONFLICTING ORDINANCES AND AGREEMENTS

Ordinance Number 83 adopted August 29, 1962, is hereby repealed; provided, however, such repeal shall take effect at 11:59 p.m. on the day immediately preceding the effective date specified in the Section of this Ordinance entitled "ACCEPTANCE OF AGREEMENT AND EFFECTIVE DATE". All other ordinances and agreements and parts of ordinances and agreements in conflict herewith are also repealed, which repeal shall take effect at the time and on the date specified in the preceding sentence.

SECTION 16 - FUTURE CONTINGENCY

(a) Notwithstanding anything contained in this Ordinance to the contrary, in the event that (a) this Ordinance or any part hereof, (b) any tariff provision by which the TELEPHONE COMPANY seeks to collect the Charge imposed by this Ordinance, or (c) any procedure provided in this Ordinance, or (d) any compensation due the CITY under this Ordinance, becomes, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the TELEPHONE COMPANY and CITY shall meet and negotiate a new ordinance that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the new ordinance shall provide the CITY with a level of compensation comparable to that set forth in this Ordinance provided that such compensation is recoverable by the TELEPHONE COMPANY in a mutually agreed manner permitted by law for the unexpired portion of the term of this Ordinance.

b) Notwithstanding anything contained in the preceding paragraph to the contrary, the CITY and TELEPHONE COMPANY agree that in the event this ordinance is submitted for review to any court in which the currently existing case styled City of Port Arthur et al v. Southwestern Bell Telephone Company, et al, Cause No. D142176 in the 136th Judicial Court, Jefferson County, Texas is pending, the CITY and TELEPHONE COMPANY agree to take any and all actions reasonably necessary to obtain approval and ratification of the ordinance by the court.

SECTION 17 - FUTURE AMENDMENTS

This ordinance governing street use may be amended at any time by the mutual agreement of the

CITY and the TELEPHONE COMPANY. It is understood that the TELEPHONE COMPANY is currently in the process of negotiating similar ordinances with other cities throughout the state. It is understood and agreed that if an ordinance governing street use with another city in this state contains a provision which the CITY feels would be more advantageous to it than the terms hereof, the CITY may require that that portion of this ordinance be reopened for negotiation. The intent of the parties is that the City of Terrell Hills will be entitled only to treatment comparable to that which was afforded under the ordinance with the other city giving due consideration to the contextual meaning of the provision on which renegotiation is sought and the effect of the proposed amendment on the meaning of the ordinance as a whole. Under no circumstance may an amendment result in a higher level of compensation than that level produced by those methodologies utilized by the TELEPHONE COMPANY to calculate compensation to other cities in Texas nor may an amendment be applied retroactively.

SECTION 18 - GOVERNING LAW

(a) This Ordinance shall be construed in accordance with the CITY Charter and CITY Code(s) in effect on the date of passage of this Ordinance to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

b) This ordinance shall be construed and deemed to have been drafted by the combined efforts of the CITY and the TELEPHONE COMPANY.

SECTION 19 - ACCEPTANCE OF AGREEMENT AND EFFECTIVE DATE

The CITY shall deliver a properly certified copy of this Ordinance to the TELEPHONE COMPANY within three (3) working days of its final passage. The TELEPHONE COMPANY shall have thirty (30) days from and after the final passage of this Ordinance to file its written acceptance of this Ordinance with the CITY Secretary. This Ordinance shall become effective beginning the first day of the quarter not less than thirty (30) days after its final passage by the CITY. (Ord. 875, 4-12-93)

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Sec. 4-2.1, Cable Franchise with KBL Cablesystems of the Southwest, Inc.

AN ORDINANCE GRANTING A FRANCHISE TO
KBL CABLESYSTEMS OF THE SOUTHWEST, INC., D/B/A PARAGON
CABLE TO FURNISH CABLE TELEVISION AND RELATED SERVICES AND

SETTING FORTH THE TERMS AND CONDITIONS
THEREOF

WHEREAS, the citizens of the CITY OF TERRELL HILLS, Texas (the "City") have been served for some time KBL Cablesystems of the Southwest, Inc., d/b/a Paragon Cable, and its predecessors, with cable television and related services pursuant to a franchise originally granted by the City on January 8, 1979 (the "Original Franchise").

WHEREAS, the Original Franchise is scheduled to terminate on January 8, 1994;

WHEREAS, the City Council has found that it is in the public interest for the citizens of the City to have access to cable television and related services; and,

WHEREAS, it is in the best interests of the citizens of the City that the City Council authorize the franchise set forth in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL HILLS, TEXAS (hereinafter, the "City"):

SECTION 1. Short Title; Definitions.

This ordinance shall be known and may be cited as the City of Terrell Hills, Texas Paragon Cable Television System Franchise Ordinance of 1993. Capitalized terms not otherwise defined herein shall have the meanings set forth on Exhibit A attached hereto and made a part hereof.

SECTION 2. Grant of Franchise.

The City hereby grants to KBL Cablesystems of the Southwest, Inc., a Texas corporation d/b/a Paragon Cable (hereinafter, together with any successor permitted hereunder, the "Grantee"), under the terms and conditions of this franchise, the non-exclusive right and privilege to erect, construct, maintain and operate in, upon, along, across, over, above and under the streets of the City and all extensions and relocations of, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation of a Cable System and the distribution of Cable Services.

SECTION 3. Franchise Term.

The franchise and the rights, privilege and authority hereby granted shall take effect and be in force as of the Effective Date and shall continue in force and effect for a term of fifteen (15) years.

SECTION 4. Transfer of Franchise: Sale of Grantee.

a. Subject to Section 4b, this franchise shall be held in personal trust by the Grantee. No interest in this franchise shall be assigned, transferred, sold or disposed of and no sale, merger, consolidation or transfer of controlling ownership interest in the Grantee shall be permitted without the prior written consent of the City and then only upon such conditions as may be prescribed to guarantee the continued performance of the terms of this franchise by the Grantee's successor. The Grantee shall be authorized to change its name at any time and, subject to the requirements of the following sentence, may transfer this franchise to any entity which is a wholly-owned subsidiary of the Grantee or which is wholly-owned by the Grantee's owner or owners. The transfer to a related entity described in the preceding sentence may be effected by the Grantee if the Grantee establishes to the reasonable satisfaction of the City that the transferee entity is sufficiently capitalized and experienced to operate and maintain the Cable System under the terms of this franchise. The Grantee shall give notice to the City of any such proposed change of name or transfer to any entity with such common ownership with the Grantee or a subsidiary of the Grantee at least sixty (60) days before the effective date of any such change or transfer. Any attempt to assign, transfer, sell, or dispose of this franchise or an interest in the Grantee except under the conditions of this Section 4a shall be void.

b. The Grantee may assign, mortgage or pledge its interest or equity in the Cable System authorized by this franchise, or any part thereof, in connection with the financing of improvements or extensions to the Cable System authorized by this franchise, or as a general pledge of all the assets of its parent corporation, or those of its successors in interest, to provide major funding for its parent corporation.

SECTION 5. Franchise Territory and Line Extension Policy.

This franchise shall be for the present territorial limits of the City and for any area hereafter added thereto during the term of this franchise. The Grantee agrees to extend Cable Service to all areas within the corporate limits of the City which have a housing density which is or becomes twenty-five (25) dwelling units or more per street mile. The Grantee shall extend Cable Services to such areas and to areas annexed by the City subsequent to the Effective Date within twelve (12) months after the City notifies the Grantee that housing density in such area has reached twenty-five (25) dwelling units per street mile in such areas.

SECTION 6. Use of Streets.

a. The Grantee shall have the right to use the streets of the City for the construction, operation and maintenance of the Cable System as prescribed, regulated and limited by provisions of this franchise and by local, Texas and federal law, as in effect from time to time.

b. All transmission and distribution structures, lines and equipment erected by the Grantee within the legal boundaries of the City shall be so located as to cause minimum interference with the proper use of streets and to cause minimum interference with the rights and reasonable convenience of property owners whose properties adjoin such streets.

c. In sections of the City where the cables, wires and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other likes facilities underground.

d. The Grantee shall comply with all permitting requirements of the City, including the payment of all permit fees and notice requirements, in connection with any proposed cut or disturbance of City streets. In case of the disturbance of any street, paved area or landscaped area by the Grantee, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, paved area and/or landscaped area to as good condition as before the disturbance.

If such restoration or replacement is not completed within thirty (30) days of the date of disturbance, or if the completed work is found by the City to be unsatisfactory, the City may repair or replace the inadequate work or complete the unfinished work and bill the Grantee for the cost of such work, including but not limited to the cost of labor, materials, supervisions, and overhead. During the term of this franchise, the Grantee shall maintain the integrity of any paved surface over the Grantee's facilities, but only to the extent that such paved surfaces have been restored by the Grantee or by the City on the Grantee's behalf.

e. If at any time during the period of this franchise the City shall elect to alter or change the grade of any street or construct any other public works which will disturb the cables or other facilities of the Grantee, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures, as the case may be, at no expense to the City.

f. The Grantee shall, on the request of any person holding a moving permit issued by the City or the State of Texas, temporarily remove, raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall be authorized to require payment in advance. Such payment shall not exceed the Grantee's cost. The Grantee shall arrange for such temporary wire changes prior to the expiration of six (6) days from the date notice is given to the Grantee by the person holding the moving permit.

g. The Grantee shall have the authority to trim trees upon and overhanging streets and easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City such trimming may be done by the City or under its supervision and direction at the expense of the Grantee if the Grantee has failed after two (2) weeks' notice by the City to perform such work. The City may at any time with the

Grantee's concurrence perform such work at the Grantee's expense.

h. If during the term of this franchise, the City grants approval of plats for new developments, the City may notify the Grantee or advise the developer to notify the Grantee of the timing of construction and location of trenching of rights-of-way and give the Grantee reasonable opportunity to place cable in such trenches. The City will promptly provide the Grantee with copies of all plats for new developments approved by the City during the term of this franchise.

i. If at any time during the term of the franchise, the Grantee's cables, wires or other equipment or facilities should be damaged or destroyed, the Grantee shall promptly and (except for damage or destruction resulting from the gross negligence of the City or its employees) at the Grantee's expense and without cost to the City repair and restore such cables, wires or other equipment or facilities. Nothing herein shall prevent the Grantee or the City from seeking recovery, reimbursement or contribution from any third party which may have caused or contributed to the Grantee's or the City's damages or expenses.

j. Whenever possible, the Grantee will bore, rather than trench, to minimize disturbance in paved areas. The Grantee assumes responsibility for establishing to the City's reasonable satisfaction that trenching, rather than boring, is the most effective means of equipment installation, taking into account street construction and maintenance, due either to cost, maintenance or liability. The City agrees that approval to trench will not be unreasonably withheld. The Grantee will perform work involving disturbance of paved areas following approval from the City's Public Works Department. The Grantee, upon prior notice before paving, shall install conduit under street intersections during their construction and otherwise install cable during the development of subdivisions to avoid subsequent cutting of streets.

SECTION 7. Franchise Fees.

a. In consideration of the grant of this franchise under this ordinance, the Grantee shall pay to the City annually the greater of five percent (5%) or such percentage permitted by applicable federal law of the Grantee's Gross Revenues derived from or attributable to the Cable System authorized by this franchise. Such payment shall be in addition to any ad valorem, sales or other taxes, license fees, permit fees or other fees or charges levied or charged by the City on the Grantee, or agreed upon contractually elsewhere in this franchise or by separate agreement. The payment due to the City pursuant to this Section 7a shall be computed and paid quarterly thirty (30) days after the close of each quarter of the Grantee's fiscal year, which currently ends on December 31. The Grantee shall file with the City, within sixty (60) days after the close of each of the Grantee's fiscal quarters, a statement showing the Gross Revenues received by the Grantee during the immediately preceding quarter and the amount of the franchise fee then due. Such statement shall also identify all cash revenues received by the Grantee during such quarter which have been excluded from Gross Revenues. Payment of the franchise fee shall be remitted with such statement. A copy of the

Grantee's income statement for the Grantee's entire fiscal year, audited by an individual or firm of independent certified public accountants, shall be made available to Grantor upon receipt by Grantee.

b. The City shall have the right to inspect and audit the Grantee's income records and the right to recompute any amounts determined to be payable under this franchise. An audit of any fiscal year may be made at any time during the term of this franchise but limited only to the examination of the Grantee's books for the immediate preceding two (2) calendar years from the date of such audit request. Any additional amount due as a result of such audit, together with interest at the maximum interest rate permitted by law from the last day of the fiscal year from which such additional amount is due, shall be paid to the City within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. The cost of such audit shall be borne by the Grantee only if it is determined that the Grantee's annual payment to the City should be increased by three percent (3%) or more of the City's annual franchise fee received in the immediate preceding two (2) calendar years from the date of such audit. Should there be such a deficiency following an audit of the Grantee's books the City shall have the right during the term of this franchise to conduct a second audit examination of the Grantee's books which may, at the Grantor's option, extend to the time period ending with the last audit period that reflected a deficiency in the Grantor's payments. Such an audit shall be conducted at Grantee's expense by an independent accounting firm to be mutually agreed upon between the parties. Such an audit shall consist of a representation letter based on an examination of the franchise fee payment schedule.

c. Acceptance of any payment by the City shall not be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any obligation of the Grantee hereunder.

SECTION 8. Liability and Indemnification.

a. The Grantee releases and shall indemnify and hold the city harmless from any and all loss sustained by the City on account of any tax, penalty, fine, costs, expense, suit, judgment, execution, claim or demand whatsoever against the City resulting from the Grantee's construction, operation or maintenance of the Cable System and/or any other actions or omissions taken or not taken by the Grantee in connection with this franchise. The Grantee may, and if requested in writing by the City shall, undertake the defense of any claim, action or proceeding for which the City is indemnified under this Section, and, thereafter, the Grantee shall not be liable to the City for any legal or other expenses of the City other than reasonable costs subsequently incurred by the City at the request of the Grantee in connection with the defense thereof. The Grantee shall not be liable for the settlement of any such claim, action or proceeding effected without its consent. The City shall give the Grantee prompt notice of any claim, action or proceeding against it upon which the City may seek indemnity hereunder.

b. The Grantee shall carry, throughout the term of this franchise, personal and property damage liability insurance with insurance companies qualified to do business in the State of Texas. Such insurance shall show the City as an additional insured party. The amounts of such insurance to be

carried for liability due to property damage shall be \$500,000 as to any one occurrence, and against liability due to injury or death of a person \$2,000,000 as to any one person and \$5,000,000 as to any one occurrence. A certificate or certificates of insurance shall be filed and maintained with the City during the term of this franchise. The Grantee agrees that, at the end of the fifth and tenth complete fiscal years following the Effective Date of this franchise, it will increase the amounts of insurance required to be maintained by the Grantee under this section 8b in accordance with an opinion of a qualified insurance consultant agreed to by the City and the Grantee stating that such amounts should be increased.

SECTION 9. Performance Evaluations.

The City Council shall have the right under this franchise at any time to review the performance of the Grantee hereunder and to ascertain that all provisions of this franchise are being fully and faithfully carried out. The City Council may conduct formal performance evaluations of the Grantee's Cable System and the Cable Services on or about the fifth, ninth and thirteenth anniversary of the Effective Date of this franchise. The City shall permit the Grantee to be involved in and Comment on establishing the method and format of such evaluation prior to the evaluation.

SECTION 10. Revocation and Termination of Franchise.

a. The City shall have the right to revoke and terminate this franchise if, in the City's sole judgment, the Grantee has (1) taken or permitted an act described in Section 14c or Committed a series of violations of this franchise such as to indicate that the Grantee is unable or unwilling to comply with the terms of this franchise, and the Grantee has failed to take reasonable steps to correct or desist from the violations within a reasonable time after due written notice has been given to the Grantee by the City, or (2) if the Grantee files in any court a petition of voluntary bankruptcy or is involuntarily adjudged bankrupt in any court of competent jurisdiction or is placed in receivership or trusteeship or (3) if the Grantee's title and interest in the Cable System authorized by this franchise or in this franchise is taken by judicial or nonjudicial execution or is forfeited or subject to forfeiture before any court.

b. If at any time the City has reason to believe that the Grantee is in jeopardy of having this franchise revoked and terminated for any reason, the City shall so notify the Grantee in writing, and order the Grantee to show cause before the City Council within thirty (30) days of such notice why such revocation or termination should not take place. If the Grantee fails to show cause, or in any case if the City finds (1) that any of the causes set forth in Section 10a are applicable, (2) that adequate notice has previously been given and (3) that the Grantee has failed to correct the defects or violations as required, the City may declare this franchise to be revoked and terminated.

SECTION 11. Customer Service Standards.

a. The Grantee shall maintain an office reasonably accessible to residents of the City who are subscribers of the Cable System and which shall be open during normal business hours, have a listed telephone number and be so operated that complaints and requests for repairs or equipment adjustments may be received at any time. The Grantee's office shall be the principal place for the receipt of Sums due from its subscribers. The Grantee shall provide for regular billing of accounts.

b. The Grantee shall furnish to each new subscriber, at the time service is installed, a written statement that clearly sets forth procedures for placing trouble calls or requesting equipment adjustments, and an annual reminder that the subscriber can call or write the City if the Grantee fails to respond to the subscriber's request for installation, service or equipment adjustment within a reasonable period of time.

c. The Grantee shall respond to requests for service on the same day if the request is received prior to 2:00 p.m. In no event shall the response time for calls received later than 2:00 p.m. exceed twenty-seven (27) hours.

d. The Grantee may interrupt Cable System service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations only after giving notice to subscribers that Cable Service will be interrupted. Cable Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday or Sunday, or the night preceding a holiday.

e. Whenever service to any subscriber of the Cable System is interrupted for any period of time in excess of twenty-four (24) hours, or the Grantee violates the service standards then in effect recommended by the National Cable Television Association, and such interruption or violation is known to the Grantee (whether or not notice is given by the affected subscriber), in addition to all other refunds and penalties due pursuant to federal law or regulation, the subscriber, upon request, shall receive a rebate of one-thirtieth (1/30th) of his monthly subscription fee for each day or part thereof from the time service is interrupted or service standards are violated until service is restored or corrected. For purposes of this Section, "interruption of service" means that a subscriber is not receiving all subscribed-for services.

f. The Grantee shall maintain records listing date and time of trouble and service complaints, identifying the subscriber and describing the nature of each complaint and what action was taken by the Grantee in response thereto. Such records shall be available for inspection by a representative of the City at any time during regular business hours. The Grantee shall use its best efforts to develop a summary of such report for each fiscal quarter for inclusion with the payment and report due under Section 7a.

g. The programming available on the Cable System and the rates in effect on the Effective Date are identified on Exhibit B attached hereto. The Grantee shall file all changes in channel space allocation and rates with the City at least thirty (30) days in advance of the effective date of such

change and shall provide Customers of the Cable System with at least thirty (30) days' prior notice of channel space allocation and rate changes;

SECTION 12. Technical Standards and Reports.

a. Technical standards shall be maintained in compliance with Federal Communications Commission Rules and Regulations 47 C.F.R., Part 76, subpart K, and as amended from time to time.

b. If, during the term of this franchise, Grantee develops, builds or obtains the ability to provide other forms of cable services not currently being provided, and such new services are offered and provided to either residential or commercial subscribers in the City, and if such services are subscribed to by residential or commercial subscribers, then, Grantee shall provide at least one (1) service connection to provide such service to Grantor's facilities as set forth in Section 18(a) herein. Provided however, that Grantee shall be under no obligation to continue to provide such new service(s) to Grantor if Grantee ceases to offer or provide such new service(s) to either resident or Commercial subscribers in the City. It is further agreed that Grantee shall upgrade its cable services to provide fiber optic technology by December 31, 1997.

c. The Grantee shall advise the City with its quarterly report of any changes in federal and/or Texas law and regulation relating to the cable industry and any advances in technology in the cable industry relating to the quality and quantity of service which may be available and shall promptly inform the City of the implementation of any interconnect with another cable system.

d. The Grantee shall arrange for its representatives to meet at least once each fiscal year with representatives of the City to provide additional information which the Grantee believes is useful to the City in connection with the Cable System and to respond to inquiries from the City in connection with the Cable system and this franchise.

SECTION 13. Parental Control of Programs.

The City and the Grantee agree that public concern has been expressed regarding the reception in subscribers' homes of television programs that are offensive to some persons, that are intended for viewing by adults and that are believed by some persons to be detrimental to the community's cultural values. Neither the City nor the Grantee wishes or intends to regulate the content of television or radio programs, or any other services obtained from independent sources and retransmitted over the Cable System. Nevertheless, the City and the Grantee agree that a public interest exists and that there is a need for certain services to permit parents to exercise greater control over the television programs watched by their children. Therefore, the Grantee agrees as follows:

(a) The Grantee shall provide a locking device to any subscriber of the Cable System, at the subscriber's request, which when locked by a key will prevent the television set from being tuned to any channel designated by the subscriber. The Grantee shall have the right to charge an amount equal to its cost of providing said locking device.

(b) If the Grantee offers any pay television services, at least one television service (pay or non-pay) shall consist of television programs predominantly of a wholesome nature intended for viewing by children.

SECTION 14. Books and Records.

a. The Grantee's books of account and records of its business and operations under and in connection with this franchise shall be maintained and available at the Grantee's office in San Antonio, Texas.

b. The City shall have access upon reasonable notice and at reasonable times to review all of the Grantee's books of account and records of its business and operations to the extent reasonably necessary to enforce the terms of this franchise.

c. Any false entry in the books of account or records of the Grantee or any false statement in the reports to the City as to a material fact, knowingly made by the Grantee, shall constitute a major violation of this franchise.

SECTION 15. Severability.

If any portion of this franchise is for any reason held invalid or unconstitutional by a court of competent jurisdiction or is superseded or preempted by any State of Texas or federal law or regulation, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity or effectiveness of the remaining portions hereof.

SECTION 16. Force Majeure.

When any provision or condition to be performed by the Grantee under the terms of this franchise is prevented, delayed or interrupted by lack of labor or materials caused by conditions beyond the reasonable control of the Grantee, or by fire, storm, flood, war, rebellion, insurrection, sabotage, riot or strike, or by failure of carriers to transport, make delivery or furnish facilities for transportation, or as a result of some law, order, rule, regulation or necessity of governmental authority, whether local, state or federal, or as the result of the filing of a suit by the City against the Grantee (unless the Grantee is ultimately determined in such litigation to have been in material violation of this franchise and Grantee has failed to cure such breach), in which the Grantee's franchise may be affected, or as a result of any cause beyond the reasonable control of the Grantee,

this franchise shall remain in full force and effect. The Grantee shall not be liable for any breach of any express or implied covenant or obligation under this franchise when the same is prevented, delayed or interrupted, provided that Grantee shall make a good faith effort to carry out or complete, as the case may be, its duties and obligations hereunder in a timely manner.

SECTION 17. Regulation.

The City shall automatically have all of the rights, benefits and powers granted to municipalities under federal or State of Texas cable television laws or regulations in effect and as amended during the term of this franchise, including specifically all powers or rights to regulate cable television rates, services and programming, as if such laws and regulations were incorporated herein. Any other matters permitted by such enactments or amendments shall be negotiated in good faith by the City and the Grantee.

SECTION 18. Publicly Owned or Leased Facilities and Public Service Broadcasting.

a. The Grantee shall provide at least one service connection in each of the following locations:

1. All governmental buildings or facilities as may be now or hereinafter designated by the City Manager or his agent;
2. all public and parochial school buildings as may be designated now or hereinafter by the chief administrative officer of each school district or parochial school system in the City; and
3. each Classroom building and dormitory building of each college or university in the City.

Such service connections shall be provided to buildings as designated by the proper administrative official within at least three (3) months of the date service is available to such building. In addition, a converter to provide the capability of receiving all services except "pay television" shall be provided to each such location.

b. No charge shall be made by the Grantee for the installation, disconnection (when requested) reconnection (when requested), monthly services and/or maintenance of equipment authorized by Section 18a.

c. Grantee agrees to develop by December 31, 1995, considering the then best available technology, the capability to introduce an audio and video message on the Cable System in times of public emergency, and to provide that such override may be introduced from a City facility. Grantee further agrees to furnish a status report of such technology available in its quarterly report due at the close of the second quarter after the passage of the ordinance manifesting this franchise agreement, and thereafter in subsequent quarterly reports as may be reasonably convenient.

d. The Grantee shall provide substantially locally-originated programming each week and shall exceed all such programming requirements or recommendations of the Federal Communications Commission or applicable State of Texas or federal law or regulation. The Grantee may produce such programming itself or may rely on local groups to produce such programming with technical assistance from the Grantee. The Grantee agrees to permit the City, at its option, to participate in the formation and operation of a broadly representative advisory board to help implement community involvement in local origination production and use of public access channels. The Grantee shall provide and maintain a studio in San Antonio, Texas or in another location at Grantee's option reasonably accessible to residents of the City for the purpose of local program production and origination.

SECTION 19. Security.

Upon request by the City, the Grantee shall furnish to the City an irrevocable letter of credit acceptable to the City or a bond issued by a surety company in form and amount reasonably acceptable to the City guaranteeing that the Grantee will faithfully fulfill and perform each and every term and condition of this franchise and that in the case of default by the Grantee, the City may recover from the principal and/or the bonding company or issuer of the irrevocable letter of credit or surety bond the City's liquidated damages for the Grantee's default.

SECTION 20. Waiver.

The waiver by either party of a breach or violation of any provision of this agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of this agreement. To the contrary, such conduct shall not be considered a waiver of either party to future performance of any such provisions of this agreement, and the obligations of the parties to such future performance shall continue in full force and effect.

SECTION 21. Equal Treatment.

If at any time during the term of this franchise, the Grantee modifies or renews its franchise agreement with the City of San Antonio, Texas or any other franchisor located wholly or in part in Bexar County, Texas, the Grantee shall notify the City and provide the City with a copy of such modification or renewal instrument. If such franchise agreement, as modified or renewed, contains provisions relating to franchise fees, customer rates or charges, city tax calculations or payments, or cable services, and the City believes such provisions to be of benefit to the City, then, at the written request of the City, such provisions shall be incorporated into this franchise. Furthermore, the Grantee shall negotiate in good faith with the City regarding any other provisions contained in said revised franchise with the City of San Antonio or any other franchisor in Bexar County, Texas and shall include agreed upon provisions in this franchise with the City. City agrees, however, that City

shall not request inclusion of any provisions relating to: (1) Purchase of the Cable System by City; (2) Expenditures related to franchise renewal or modification; or, (3) public, educational or governmental access in excess of that required by law.

EXHIBIT A

“Cable Services” means the total of the following:

1. the transmission to or from subscribers or other authorized users of video programming or other telecommunications service; and,
2. subscriber interaction, if any, which is required for the selection of such video programming or other telecommunications service.

“Cable Systems” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Services to multiple subscribers or other authorized users in the City. Such term does not include the following:

1. a facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way;
3. a facility of a Common carrier, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to subscribers; or
4. any facilities of any electric utility used solely for operating its electric utility system.

“Effective Date” means date franchise agreement takes effect.

“Gross Revenue” means all revenues received by the Grantee from all sources and derived from or attributable to the Cable System, including but not limited to installation fees, subscriber fees, pay television charges and advertising charges, but excluding all taxes collected by the Grantee as required by law and wholly transmitted to a local government, the State of Texas or the federal government.

(Ord. 885, 7-12-93)

* * * * *

Sec. 4-2.2 Cable Franchise with Grande Communications, Inc.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TERRELL HILLS, TEXAS, ESTABLISHING A FRANCHISE AGREEMENT WITH GRANDE COMMUNICATIONS, INC. FOR CABLE TELEVISION AND OTHER SERVICES; PROVIDING THE TERMS AND CONDITIONS UNDER WHICH THE FACILITIES OF GRANDE COMMUNICATIONS, INC. WILL BE INSTALLED, OPERATED AND MAINTAINED; ESTABLISHING A TERM OF THE AGREEMENT; AND ESTABLISHING AN EFFECTIVE DATE.

Section 1. Definitions; construction.

In this Agreement:

1. *Basic monthly service* means the minimum level of cable service for which Grande charges the lowest monthly fee.
2. *Cable service* means:
 - a. The one-way transmission to customers of:
 1. video programming provided by, or comparable to video programming provided by, a television broadcast station; or
 2. other programming services, by which is meant video, audio, or data information that Grande makes generally available to all customers, to the extent the services are deemed to be "cable service" under federal law; and
 - b. Customer interactive (two-way) transmissions required for the selection or use of video programming or other programming services (such as, for example, customers' accessing and utilization of data bases, the Internet, video game services, or other services), to the extent they are "cable service" under federal law.
3. *City* means the City of Terrell Hills, a Texas municipal corporation.
4. *City Council* means the City Council of the City.
5. *City Manager* means the City Manager of the City or the City Manager's designated representative.
6. *City requirements* means all City charter provisions, ordinances, regulations, resolutions and policies, in effect on the effective date of this Agreement and as they may be changed from time to time during the term of this Agreement, that apply to Grande's activities under this Agreement

7. *City right-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, alley, sidewalk, boulevard, bridge, tunnel, utility easement or similar property in which the City holds a property interest or exercises a right of management or control and which may be used for the installation and maintenance of Grande's facilities.

8. *FCC* means the Federal Communications Commission.

9. *Grande* means Grande Communications, Inc., a Delaware corporation

10. *Grande's facilities* means Grande's cables, lines, wiring, towers, poles, underground conduits, manholes, electronic conductors, and other fixtures necessary for the maintenance and operation of Grande's cable television signal distribution system and service.

11. *Person* means any person, firm, partnership, association, corporation, company or organization of any kind.

12. *Significant service interruption* means a cable service outage lasting four continuous hours or more to 1,000 or more of Grande's customers in the City.

13. *Start-up date* means the date on which Grande begins distributing television signals to any customer through Grande's facilities.

14. *Will* is mandatory and not merely directory.

Words and phrases that are not defined in this section will have the meaning provided in the federal Communications Act of 1934 as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and if not so defined, will have their common and ordinary meaning.

Section 2. Grant of Franchise.

A. The City grants to Grande a franchise to construct, erect, operate and maintain Grande's facilities in, across and above City right-of-way, subject to the terms of this Agreement.

B. The City grants this franchise only to the extent of the City's interest in the City right-of-way. In granting this franchise, the City does not:

1. warrant title to any City right-of-way to Grande;
2. assume any responsibility for securing for Grande any City right-of-way the City does not already own or control;

3. give to Grande any form of permission to make and maintain attachments to City utility poles, or to use any City property other than City right-of-way;
4. make the City responsible in any way for the construction, operation, maintenance, or performance of Grande's facilities, or for any other activity or obligation of Grande;
5. convey to Grande any ownership or property right in any City right-of-way occupied or used by Grande regardless of any payments made by Grande to the City, nor any other action or inaction by the City or by Grande;
6. grant to Grande any right or privilege lawfully within the jurisdiction of any other regulatory body or agency; Grande will secure and hold all necessary licenses, permits and authorizations required in order to install, operate and maintain Grande's facilities; or
7. grant to Grande the right to allow the use of Grande's facilities by another entity for any service. Grande will not allow the use of Grande's facilities by another entity to provide any service unless the entity warrants that it has obtained all authorizations required by the City for the use.

C. This franchise is not exclusive. The City reserves the right to make a similar grant to any person any time.

Section 3. Protection of Persons and Property; Indemnification and Waiver; Insurance.

A. Grande will take all necessary precautions to protect all persons and property against personal injury or property damage that may result from the installation, maintenance or operation of Grande's facilities. If, in the City's opinion, Grande has not taken any such necessary precautions, the City may notify Grande, and Grande will correct the situation within a reasonable time. Grande agrees, however, that it is solely responsible for the installation, maintenance and operation of Grande's facilities, and the City does not assume any such responsibility because of the City's actions or inactions regarding the installation, maintenance or operation of Grande's facilities.

B. Grande agrees to hold harmless, indemnify and defend the City and its officers, agents and employees from and against all claims, damages and liability, including fees of attorneys and expert witnesses, arising in connection with the installation, maintenance and operation of Grande's facilities. Grande will defend at its expense all actions that may be commenced against the City in connection with the installation, maintenance and operation of Grande's facilities. The selection of legal counsel for any such defense will be at the sole discretion of the City. The specification of minimum coverage limits in this section does not limit Grande's indemnity obligations in any way.

C. Grande will maintain in full force and effect liability insurance issued by a company authorized to do business in Texas in at least the following coverage amounts:

\$1,000,000 for the protection of the public in connection with liability for death and injury to persons or damage to property, in any way arising out of or through the acts or omissions of the company, its agents or employees or to which the company's negligence shall in any way contribute. The City shall be named as an "additional insured" on all such policies.

Section 4. Facilities Construction; Service Availability.

A. Grande will complete the initial construction of all of Grande's facilities by January 1, 2007. As of that date, Grande will make cable service available to every residence within the City. If Grande does not complete construction of Grande's facilities throughout the City at the same time, Grande will give written notice to the City of the date for initiation of service to each area of the City in which Grande is completing construction.

B. Grande will install Grande's facilities in compliance with all applicable laws and regulations, including the City requirements and the regulations of the FCC and the Federal Aviation Administration

C. Grande will extend Grande's facilities and make cable services available to new residential areas within the City whenever density of at least 40 residential units per cable mile is realized, as measured from Grande's facilities then existing. Measurement of cable length will not include service drops to residences.

D. Grande will extend Grande's facilities and make cable services available to any residence or business where the potential customer agrees to pay the cost of the extension.

Section 5. Operation and Maintenance of Grande's Facilities.

A. Grande will operate and maintain Grande's facilities so that they produce audio and visual signals that are clear and undistorted, and as good as state-of-the-art cable service technology allows as of the effective date of this Agreement and throughout the term of this Agreement.

B. Grande will operate and maintain Grande's facilities in compliance with all applicable laws and regulations, including the City requirements and the regulations of the FCC and the Federal Aviation Administration. Grande will install, operate and maintain Grande's facilities so that they do not cause cross-modulations in the cable or interference with other electrical or electronic systems.

C. Grande will have a local listed or toll-free telephone number to receive complaints and requests for repairs or adjustments at any time, 24 hours per day, seven days per week. Grande will have sufficient employees to provide safe, adequate, and proper services for Grande's facilities. Grande will locate and correct malfunctions in Grande's facilities promptly. If a customer is not satisfied with the resolution of a service complaint after contacting the local office twice for the same complaint, on the third contact the complaint will be handled personally by Grande's general

manager or his equally authorized designee.

D. Grande will notify all customers by mail of all channel changes within seven days of the change.

E. Grande will provide electronic devices for sale to customers which will allow the customer, at the customer's discretion, to prevent selected channels from reaching the customer's receiver devices, at Grande's cost plus 10%.

F. Grande will employ a trained and competent staff for the installation, operation and maintenance of Grande's facilities.

G. Grande will render efficient service, make repairs properly, and interrupt service only for good cause and for the shortest time possible. Planned service interruptions will be preceded by notice to customers and will occur during periods of minimum use of Grande's facilities by Grande's customers.

H. All installations and repairs made by Grande will be performed in a good, substantial, safe and workmanlike manner. Grande will make all connections of wires, cables and equipment to customers' residences and buildings in a manner that is waterproof and prevents access by insects and vermin.

I. Grande agrees to provide programming responsive to the City's needs and interest for Spanish language programming. This programming shall consist of at least two Spanish language channels or other Spanish cultural equivalents available at all times in the most popular service level offered by Grande.

J. Grande will not hinder the retransmission of a signal transmitted by any broadcast or non-broadcast service for the benefit of the hearing impaired.

K. Effective one year after Grande completes its system build-out, Grande will provide a report to the City Manager within 15 days after the end of each calendar quarter that includes the following for the preceding calendar quarter:

1. Grande's compliance with FCC customer service requirements, with previous one-year history, in narrative, table and graph form;

2. The total number and the total duration of significant service interruptions, which are cable service outages lasting four continuous hours or more to 1,000 or more of Grande's customers in the City, with one-year history, in narrative, table and graph form.

L. Grande will not disclose personally identifiable information concerning any customer to any third party without the prior written consent of the customer. Personally identifiable information will not include any record of aggregate data which does not identify particular persons.

Section 6. Provision by Grande of Facilities and Services to Public Entities.

A. To the extent permitted by law, Grande agrees to install at its expense all equipment necessary to enable local emergency management officials to interrupt all television broadcasting on Grande's facilities for the purpose of making emergency management announcements. This equipment is to be installed at a location designated by the City by the start-up date.

B. Grande shall provide PGE access channels to the extent that State and Federal law so require.

Section 7. Promulgation of Rules by Grande; Refunds.

A. Grande may promulgate rules, regulations, terms and conditions governing the conduct of its business. These rules, regulations, terms and conditions must be reasonable and must not conflict with the terms of this Agreement or the charter, ordinances, regulations or policies of the City, the State of Texas or the United States.

B. Grande will make appropriate credits or refunds to customers for periods when Grande's facilities undergo a significant service interruption and in other circumstances in which Grande's services are not of the highest quality.

Section 8. Conditions on Occupancy of City Right-of-Way.

A. Grande will submit plans for any change in Grande's facilities in City right-of-way, including but not limited to changes in the location of facilities and the extension or construction of new facilities, to the City Manager's designated representative at least five days prior to the start of construction of the change. Grande will not begin construction of the change without first obtaining the approval of the plan by the City Manager's designated representative. These requirements do not apply to bona fide emergency repairs. Grande will provide immediate verbal notice to the City Manager's designated representative of any excavation performed within a City right-of-way in connection with an emergency repair.

B. Grande will not place Grande's facilities where they will interfere with the existing lines, equipment or fixtures of any water, wastewater, gas, electric, cable television or telephone utility, or with drainage, in a City right-of-way. Grande will place any poles, equipment and fixtures set by it in any street or alley at the outer edge of the sidewalk and as close as practicable to the boundary of the street or alley, and in a manner that does not interfere with vehicle or pedestrian travel on streets, alleys and rights-of-way.

C. In City right-of-way where electric and telephone service lines are routed underground, Grande

will route its lines underground. Grande will utilize subsurface boring techniques wherever reasonably feasible to minimize disturbance in paved areas.

D. When Grande or its contractors, agents or employees disturb any pavement, sidewalk, driveway or other improved surfacing in City rights-of-way, Grande will replace and restore the surfacing throughout the disturbed area to a condition as good or better than the condition of the surface before work was commenced. Grande will repair any settling or deterioration of the restored surface for a period of one year after the completion of the work. Grande will fully comply with all regulations applicable to the work, including but not limited to sawcutting, back filling, compaction and paving standards. Grande will replace or repair all privately and publicly owned property damaged as a result of the installation, operation or maintenance of Grande's facilities.

F. Grande's use of City right-of-way will be subordinate to roadway, sidewalk and drainage uses. If the City elects to install or alter the route, location, width or grade of any street, alley, sidewalk, drainage, or related facility in a City right-of-way, Grande will remove, relay or relocate Grande's facilities that are affected at Grande's expense upon reasonable notice by the City. The City will have the right to require Grande to change the location of any of Grande's facilities at Grande's expense when the public convenience requires the change, in the opinion of the City Manager. In the event a City right-of-way is vacated or abandoned, Grande will remove all of its facilities from the right-of-way, and restore the premises without delay or cost to the abutting owners or the City. If Grande refuses or fails to remove, relay or relocate Grande's facilities after notice by the City, the City will have the right to remove, relay or relocate Grande's facilities, and charge the costs to Grande, and any resulting interruptions in service to any of Grande's customers will be the sole responsibility of Grande. Grande's failure to pay any such costs to the City will constitute a default by Grande under this Agreement. Grande will hold the City harmless for any damage to Grande's facilities located in City right-of-way in the event Grande's facilities are damaged as a result of construction or maintenance operations performed on the City's roadways, sidewalks or drainage facilities by the City or the City's agents, employees or contractors.

G. Grande's use of City right-of-way will be subordinate to use by City utilities. If the City elects to install or alter the route, location or character of any City utility facility in a City right-of-way, Grande will remove, relay or relocate Grande's facilities that are affected at Grande's expense upon reasonable notice by the City. If Grande refuses or fails to remove, relay or relocate Grande's facilities after notice by the City, the City will have the right to remove, relay or relocate Grande's facilities, and charge the costs to Grande, and any resulting interruptions in service to any of Grande's customers will be the sole responsibility of Grande. Grande's failure to pay any such costs to the City will constitute a default by Grande under this Agreement. Grande will hold the City and the City's agents, employees and contractors harmless for any damage to Grande's facilities located in City right-of-way in the event Grande's facilities are damaged as a result of installation or maintenance operations performed on the City's utilities by the City or the City's agents, employees or contractors.

H. Grande will provide as-built maps of all or part of Grande's facilities in hard copy and computer form, compatible with the City's mapping systems, at the request of the City Manager.

I. Grande will comply with all City requirements, requirements of other governmental agencies, and industry standards for locating existing utility facilities prior to performing any maintenance work on Grande facilities that requires excavation.

J. Grande will temporarily raise or lower its wires and cables to permit the moving of buildings at the request of any person holding a building moving permit issued by the City. Grande may charge to the requesting person the reasonable expense of temporary removal, raising or lowering of wires and cables, and Grande may require payment in advance. Grande may require that a request be made at least 48 hours in advance.

K. Grande will have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City to prevent branches from coming in contact with Grande's facilities. All trimming will be done in accordance with City requirements and at Grande's expense.

Section 9. Preferential or Discriminatory Practices Prohibited.

A. Grande will not grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage as to rates, charges, service facilities, rules, regulations or other aspects of its business practices. This does not prohibit Grande from establishing a graduated scale of charges and classified rate schedules to which any customer coming within the classification would be entitled. Grande will not deny access to cable service to any potential residential customer because of the income of the customer or of residents of the area in which the customer is located. Grande will provide cable service programming on an equal basis to all areas of the City.

B. Grande will not discriminate in any way in the provision of services to customers on the basis of race, color, religion, national origin, age, sex or disability.

C. Grande will not discriminate against any person in its employment practices because of race, color, religion, national origin, age, or sex, nor will Grande discriminate in its employment practices against any qualified person because of disability.

Section 10. Approval of Transfer.

A. Grande will have the right to transfer this Agreement. The written approval of the City Council of the City will be secured by Grande before Grande may transfer or assign this Agreement, or any of the rights or privileges included within it, or any significant portion of its plant or system.

B. Any successor or assignee of Grande will be bound by all the terms of the Agreement. Any transfer or assignment will be effective only when the assignee files its written acceptance and

agreement to be bound by this Agreement with the City Secretary.

C. The City will not unreasonably withhold approval of a transfer. The proposed assignee must show its ability to operate and maintain Grande's facilities, its financial responsibility, and its ability to comply with the terms of this Agreement.

Section 11. Payment of Franchise Fee to City; Audit.

A. General Compensation. The City Council finds that the City right-of-way to be used by Grande in the provision of services in the City is valuable public property, acquired and maintained by the City at substantial expense and obligations to City taxpayers. Without the rights granted by this Agreement, Grande would be required to undertake substantial investments and obligations in acquiring its own right-of-way and easements. Grande agrees to pay to the City as general compensation a franchise fee consisting of three percent (3%) of Grande's gross revenue derived within the City from cable service. It is the intent of the parties to include in the term "gross revenue" the value of all consideration to Grande, cash and otherwise, that Grande derives from the provision of cable service through and in connection with Grande's facilities, including:

1. all fees charged to Grande's customers for use of Grande's facilities;
2. all revenues generated from leasing Grande's facilities for the provision of services governed by this franchise agreement.
3. advertising, including a prorata portion of national revenue attributable to Grande from the operation of Grande's facilities in the City; and
4. sale or rental of customer lists.

"Gross revenue" does not include Grande's revenues from telecommunications services, nor does it include revenue not actually received.

B. Calculation and Payment on a Quarterly Basis of Franchise Fee. Grande will make franchise fee payments to the City each calendar quarter. Grande will make these payments to the office designated by the City Manager by the 30th day following the close of each respective quarter. Grande will make any necessary prorations. Each payment will be accompanied by a summary of the data and calculations to support the amount of the payment, including a breakout by month.

C. The compensation in this section is in addition to all special assessments and taxes, including, but not limited to, ad valorem taxes, right-of-way construction permits, inspection fees and assessments for recovery of costs incurred by the City.

D. For any quarterly payment made after noon on the date due, Grande shall pay a late payment charge of \$100.

E. Grande's payment of compensation under this section does not limit or impair the privileges or rights of the City, whether under this Agreement or otherwise. The City's acceptance of payment

will not be construed as an agreement that the amount paid is correct, nor will it be construed as a release of any claim which the City may have.

F. Grande will file with the City Manager a statement of Grande's gross revenue for each fiscal year not later than the 120th day after the end of Grande's fiscal year. The statement must contain a detailed description of gross revenue and uncollectible accounts for the year.

G. Grande will keep complete and accurate records and books of accounts of its business and operations in the City in accordance with generally accepted accounting principles. The City will have the right to audit, inspect and copy all of Grande's books, accounts, maps and other records reasonably required by the City to determine the amounts of franchise fee payments to be made by Grande to the City.

Section 12. Term of Grant; Forfeiture; Termination.

A. This Agreement will be in full force and effect for a term of 15 years beginning October 16, 2000.

B. Grande will be entitled to one five year extension of the term of this Agreement. The request must be in writing and must be submitted to the City Manager no later than January 1, 2012. The extension, upon timely notice to the City Manager, will be automatic if

1. Grande is in substantial compliance with the material terms and conditions of this franchise;
2. Grande does not give the City formal renewal notice under 47 U.S.C. 546(a), on or before December 1, 2011.
3. Grande has complied with this Agreement; and
4. Grande's performance has been consistent with current overall industry technical practices and range and level of services, and Grande has the demonstrated ability and agrees, as expressed in the extension request, to perform consistently with industry practices during the extension period by implementing improvements to Grande's facilities that are commercially feasible.

If the City Council elects to deny the extension of this Agreement, the City Manager will send written notice of the reason for the denial to Grande by May 1, 2012.

C. The City Council may initiate a review of the performance of Grande under this Agreement at any time. To determine satisfactory performance, the City will consider Grande's technical performance, its customer service experience, and its compliance with the terms of this Agreement. If the City Council finds the performance of Grande to be unsatisfactory, the City Manager will notify Grande in writing of the specific areas of unsatisfactory performance and give Grande a

reasonable time to correct the deficiency. If Grande does not correct the deficiency within the time given, the City Council may terminate this Agreement.

D. Grande commits a default under this Agreement if Grande:

1. fails to make any required payment to the City in a timely manner;
2. violates any material provision of this Agreement or any determination made by the City Manager or City Council under this Agreement, or fails to comply with any City requirement;
3. fails to exercise diligence in commencing or completing construction of Grande's facilities;
4. fails or ceases to furnish cable services in accordance with this Agreement; or
5. attempts to evade any of the provisions of this Agreement or attempts to practice any fraud or deceit upon the City.

E. In addition to all other rights of the City under this Agreement Or otherwise, the City Council may terminate this Agreement on the basis of a default by Grande if Grande fails to cure the default within 30 days after receipt of written notice from the City Manager of the default, or within a different time period set by the City Manager for good cause in the notice of default.

F. In the event the City terminates this Agreement, Grande will have 60 days from the date of receipt of notice of termination to remove all of Grande's facilities from City right-of-way. The City may remove and dispose of; or may assume ownership of and may use, any of Grande's facilities that are not timely removed by Grande. The City may charge any costs for removal and disposal of Grande's facilities to Grande.

G. Any failure of the City to enforce any provision of this Agreement in one or more instances will not be construed as a waiver of the City's right to fully enforce this Agreement after that time.

Section 14. Miscellaneous Provisions.

A. Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City:
City Manager
City of Terrell Hills
5100 N. New Braunfels
San Antonio, TX 78209
Fax: (210) 822-2297

To Grande:

Grande Communications, Inc.
401 Carlson Circle
San Marcos, TX 78666
Fax: (512) 878-4010

If a party changes its address or facsimile number for notice purposes, it will provide written notice of the new address to the other party within 10 days.

B. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

C. If Grande is rendered unable to carry out a specific obligation under this Agreement, other than an obligation to make payments to the City, because of a circumstance (an “uncontrollable circumstance”) beyond Grande's control, such as a civil disturbance, unforeseeable materiel and service shortages, unavoidable casualty, labor dispute, severe weather, or other similar event, or an order, decree, rule or regulation of any court or government body having jurisdiction over Grande, or any mandates imposed by the City which have the effect of rendering Grande unable to perform under the terms of this Franchise Agreement, Grande will give prompt written notice to the City of the uncontrollable circumstance and the obligation involved, and the obligation will be suspended during the period of the uncontrollable circumstance.

D. This Agreement will be in effect from and after its passage by the City Council of Terrell Hills, publication of notice its adoption in a newspaper of general circulation in the City as required by the City Charter and the filing of acceptance by Grande with the City Secretary.

E. Grande will have 30 days after the date of the publication of notice of adoption of this ordinance to file its written acceptance with the City Secretary. The written acceptance will be in the form attached as Exhibit A.

(Ord 1063, 8-14-00)

Sec. 4-2.3 Cable Franchise with Western Integrated Networks

This CABLE TELEVISION FRANCHISE AGREEMENT is made and entered into by and between the City of Terrell Hills, a Texas Municipal Corporation and Home-Rule Municipality, acting herein through its City Manager pursuant to Ordinance No. 1068, passed and approved on October 9, 2000, respectively, as Franchisor, (herein referred to as “Grantor” or “City”), and Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership, as Franchisee (herein referred to as “Grantee”) with its principal place of business being located at 2000 South Colorado Boulevard, Suite 2-800, Denver, Colorado 80222, and both parties do hereby **WITNESSETH:**

WHEREAS, Grantee, which is a privately held company with its corporate offices in Denver, Colorado did appear before the City Council to petition that the company be awarded a non-exclusive Franchise to construct a Cable/Broadband System in the City of Terrell Hills; and

WHEREAS, Grantee desires use of certain Public Rights-Of-Way within the City of Terrell Hills for the purpose of constructing, maintaining and operating Grantee's Cable/Broadband System for the purpose of offering Cable Television and other services as defined by this Franchise Agreement and pursuant to local, state and federal laws, and such use requires a Franchise Agreement; and

WHEREAS, this use of the Grantor's streets will be conducted in such a manner that is not inconsistent with the use of the Grantor's Public Rights-Of-Way; and

WHEREAS, this Franchise Agreement will allow the Grantee to operate a Cable/Broadband System, which will include Internet service and other types of services; and

WHEREAS, consistent with H.B. 1777 prior to offering local exchange telecommunications service to its customers, the Grantee will obtain the City's standard right-of-way use permit which will be developed by the City for all certificated telecommunications providers that maintain facilities in the City's rights-of-way; and

WHEREAS, Grantee has proposed to construct a Cable/Broadband System with a minimum of 860 megahertz band width capacity utilizing state-of-the-art broadband equipment and fiber optic network infrastructure facilities; and

WHEREAS, City Council has determined that such a Cable/Broadband System will further the public convenience and public welfare of the inhabitants of Terrell Hills; and

WHEREAS, it is in the City's interest to set forth rights, duties and obligations of Grantee in this Franchise Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL HILLS, TEXAS (hereinafter, the "City"):

SECTION 1. Short Title; Definitions.

This ordinance shall be known and may be cited as the City of Terrell Hills, Texas, Western Integrated Networks Cable Television System Franchise Ordinance of 2000.

- A. Access Channel" means any non-commercial public, educational or government channels as defined by the Federal Communications Commissions ("FCC").

B. "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast service, including the delivery of broadcast signals and programming originated over the network, covered by the minimum monthly charge paid by subscribers. Basic cable tier must include: (1) all local television broadcast stations carried on the system by virtue of the FCC's must-carry and retransmission consent provisions; (2) all public, educational and governmental ("PEG") access channels; and (3) any other local television broadcast stations carried on the system.

C. "Broadcast" means the over-the-air transmission of electro-magnetic audio or video signals.

D. "Cable Act" shall mean the Cable Communications and Policy Act of 1984, found in 47 U.S.C. § 521 *et. seq.*, as amended.

E. "Cable/Broadband System" shall have the meaning ascribed to the term "Cable/Broadband System" under the Cable Act.

F. "Cable Service" shall have the meaning ascribed to it under the Cable Act, including Internet access service, but shall not include the provision of telecommunications service, as otherwise defined.

G. "City" means the City of Terrell Hills, Texas.

H. "City Council" means the governing body of the City of Terrell Hills.

I. "City Manager" means the chief administrative officer of the City of Terrell Hills or his designated agent.

J. "Cablecast" shall mean to distribute video programming over a cable television system.

K. "Channel" shall mean a band of frequencies six megahertz in width in the electromagnetic spectrum.

L. "Converter" shall mean an electronic device capable of converting electronic signals to other than their original frequencies so as to eliminate interferences within television receivers of subscribers.

M. "Dwelling unit" shall mean a room or suite of rooms, in a building or portion thereof, used for living purposes by one family.

N. "Educational Authorities" shall mean those *public* or parochial school districts within the City of Terrell Hills, and/or those colleges and universities within the City of Terrell Hills, whether operating independently or in unison in relation to the transmission or reception of programming through the Cable/Broadband System.

O. "Expanded Service" shall mean the level of service received by a Cable/Broadband System subscriber for an additional charge over the Basic Service charge and which will allow for the capability to receive other services being offered by the grantee with the exception of pay television services, pay per view, per program, or other services for which an additional fee is charged, or limited access services.

P. "FCC" shall mean the Federal Communications Commission.

Q. "Franchise" shall mean the authorization granted by this ordinance to construct, operate, and maintain a Cable/Broadband System in the corporate limits of the City of Terrell Hills.

R. "Grantor" shall mean the City of Terrell Hills.

S. "Grantee" shall mean Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership, or its successors and assigns.

T. "Gross Annual Revenues" shall mean all revenues derived *by* the Grantee, its affiliates or subsidiaries from and in connection with the operation of a Cable/Broadband System as authorized by this Franchise to provide Cable Service. For the purposes of this section, this term shall include, but not be limited to, installation fees, fees for Basic Service and Expanded Basic Service, Fees for Premium Service, fees for any cable programming service, and any other subscriber fees, charges for lease of channels, revenue from advertising, fees, charged for carriage of programming on the system. The term shall not include any taxes or fees on services furnished by the Grantee which is imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Grantee for such governmental unit. Revenue received by the City under this Franchise is not such a tax.

U. "Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.

V. "Pay Television" shall mean the delivery over the Cable/Broadband System of video and audio signals in intelligible form to subscribers for a fee or charge over and above the charge for basic or expanded services, on a per program, per channel, or other subscription basis.

W. "Premium Service" shall mean the same as pay television.

X. "Subscriber" shall mean a lawful recipient of services, which are delivered over the Cable/Broadband System.

Y. "Public Rights-of-Way" or "Right-of-Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane path, public way or place, sidewalk, alley,

boulevard, parkway, drive or other easement now or hereafter held by the City and shall include other easements or rights of way as shall be now held or hereafter held by the City and its Grantee for the purposes of installing or transmitting cable television system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

Z. "User" shall mean a person utilizing a cable television system channel for purposes of production or transmission of materials to subscribers.

SECTION 2. Grant of Franchise.

The City hereby grants to Western Integrated Networks of Texas Operating L.P., a Delaware limited partnership (hereinafter, together with any successor or assignee permitted hereunder, the "Grantee"), under the terms and conditions of this franchise, the non-exclusive right and privilege to erect, construct, maintain and operate in, upon, along, across, over, above and under the streets of the City and all extensions and relocations of, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation of a Cable/Broadband System and the distribution of Cable Services.

SECTION 3. Franchise Term.

The franchise term and the rights, privilege and authority hereby granted shall take effect and be in force as of November 11, 2000. This franchise shall continue in force and effect for a term of fifteen (15) years from the Effective Date, or until November 11, 2015. The date herein referred to as the "Effective Date" of this franchise shall be November 11, 2000.

A. This Franchise may be renewed by the City Council upon application by the Grantee pursuant to the procedures established in this Section, and subject to the Cable Act, State of Texas and other applicable laws. In the event that renewal procedure laws change during the term of this Franchise subsection (b) below shall be modified in accordance with those changes.

B. Pursuant to the applicable laws which are in effect at the inception of this Franchise Agreement, during the six (6) month window between the thirty-sixth (36th) and thirtieth (30th) months prior to the expiration of the Franchise, the Grantee shall inform the City Council in writing of its intent to seek renewal of the Franchise. Grantee will submit such material as the City may require and include any proposals for an upgrade of the Cable/Broadband System to the City at this time.

SECTION 4. Transfer of Franchise; Sale of Grantee.

A. Subject to Section 4.B., this franchise shall be held in personal trust by the Grantee. No interest in this franchise shall be assigned, transferred, sold or disposed of and no sale, merger, consolidation or transfer of controlling ownership interest in the Grantee shall be permitted without the prior written consent of the City and then only upon such conditions as may be prescribed to guarantee the continued performance of the terms of this franchise by the Grantee's successor. The Grantee shall be authorized to change its name at any time and, subject to the requirements of the following sentence, may transfer this franchise to any entity which is a wholly-owned subsidiary of the Grantee or which is wholly-owned by the Grantee's owner or owners. The transfer to a related entity described in the preceding sentence may be effected by the Grantee if the Grantee establishes to the reasonable satisfaction of the City that the transferee entity is sufficiently capitalized and experienced to operate and maintain the Cable/Broadband System under the terms of this franchise. The Grantee shall give notice to the City of any such proposed change of name or transfer to any entity with such common ownership with the Grantee or a subsidiary of the Grantee at least sixty (60) days before the effective date of any such change or transfer. Any attempt to assign, transfer, sell, or dispose of this franchise or an interest in the Grantee except under the conditions of this Section 4.A. shall void this Franchise Agreement.

B. The Grantee may assign, mortgage or pledge its interest or equity in the Cable/Broadband System authorized by this franchise, or any part thereof, in connection with the financing of improvements or extensions to the Cable/Broadband System authorized by this franchise, or as a general pledge of all the assets of its parent corporation, or those of its successors in interest, to provide major funding for its parent corporation.

SECTION 5. Franchise Territory and Line Extension Policy.

This franchise shall be for the present territorial limits of the City and for any area hereafter added thereto during the term of this franchise. The Grantee agrees to extend Cable Service to all areas within the corporate limits of the City, which have a Residential Dwelling Unit density, which is or becomes twenty-five (25) dwelling units or more per cable plant mile required to provide service. The Grantee shall extend Cable Services to such areas and to areas annexed by the City subsequent to the Effective Date within twelve (12) months after the City notifies the Grantee that housing density in such area has reached twenty-five (25) Residential Dwelling Units per cable plant mile in such areas.

SECTION 6. Use of Streets.

A. The Grantee shall have the right to use the streets of the City for the construction, operation and maintenance of the Cable/Broadband System as prescribed, regulated and limited by provisions of this franchise and by local, Texas and federal law, as in effect from time to time.

B. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets

and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin said streets. The installation and/or construction of above ground structures, lines and equipment by Grantee shall require the prior approval of the City Manager for aesthetic and location suitability, unless such structures, lines and equipment will be located on the same poles as existing electric, telephone or other CATV plant facilities. City approval shall not be unreasonably withheld.

C. In sections of the City where the cables, wires and other like facilities of public utilities and other cable plant facilities are placed underground, the Grantee shall place its cables, wires or other like facilities underground, now or in the future. In addition, if the City chooses to remove current aerial facilities to be placed underground, Grantee will also be required to remove and place current aerial facilities underground.

D. The Grantee shall comply with all permitting requirements of the City, including the payment of all permit fees and notice requirements, in connection with any proposed cut or disturbance of City streets. In case of the disturbance of any street, paved area or landscaped area by the Grantee, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, paved area and/or landscaped area to as good condition as before the disturbance. If such restoration or replacement is not completed within thirty (30) days of the date of disturbance, or if the completed work is reasonably found by the City to be unsatisfactory, the City, after written notice to Grantee, may repair or replace the inadequate work or complete the unfinished work and bill the Grantee for the cost of such work, including but not limited to the cost of labor, materials, supervisions, and overhead if Grantee fails to repair or replace the inadequate or unfinished work within a reasonable time. During the term of this franchise, the Grantee shall maintain the integrity of any paved surface over the Grantee's facilities, but only to the extent that such paved surfaces have been restored by the Grantee or by the City on the Grantee's behalf.

E. If at any time during the period of this franchise the City shall elect to alter or change the grade of any street or construct any other public works which will disturb the cables or other facilities of the Grantee, the Grantee, upon reasonable written notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures, as the case may be, at no expense to the City.

F. The Grantee shall have the authority and duty to trim trees upon and overhanging streets and easements of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City such trimming may be done by the City or under its supervision and direction at the expense of the Grantee if Grantee has failed after two (2) weeks' written notice to perform such work. City may at any time with the Grantee's concurrence perform such work at Grantee's expense.

G. If during the term of this franchise, the City grants approval of plats for new developments, the City shall notify the Grantee or advise the developer to notify the Grantee of the timing of construction and location of trenching of rights-of-way and give the Grantee reasonable opportunity

to place cable in such trenches. The City will make available to the Grantee copies of all plats for new developments approved by the City during the term of this franchise.

H. If at any time during the term of the franchise, the Grantee's cables, wires or other equipment or facilities should be damaged or destroyed, the Grantee shall promptly and (except for damage or destruction resulting from the negligence of the City or its employees) at the Grantee's expense and without cost to the City repair and restore such cables, wires or other equipment or facilities. Nothing herein shall prevent the Grantee or the City from seeking recovery, reimbursement or contribution from any third party which may have caused or contributed to the Grantee's or the City's damages or expenses.

I. Grantee's use of City right-of-way will be subordinate to roadway, sidewalk and drainage uses. If the City elects to install or alter the route, location, width or grade of any street, alley, sidewalk, drainage, or related facility in a City right-of-way, Grantee will remove, relay or relocate Grantee's facilities that are affected at Grantee's expense upon reasonable notice by the City. The City will have the right to require Grantee to change the location of any of Grantee's facilities at Grantee's expense when the public convenience requires that change, in the opinion of the City Manager. In the event a City right-of-way is vacated or abandoned, Grantee will remove all of its facilities from the right-of-way, and restore the premises without delay or cost to the abutting owners or the City. If Grantee refuses or fails to remove, relay or relocate Grantee's facilities after notice by the City, the City will have the right to remove, relay or relocate Grantee's facilities, and charge the costs to Grantee, and any resulting interruptions in service to any of Grantee's customers will be the sole responsibility of Grantee. Grantee's failure to pay any such costs to the City will constitute a default by Grantee under this Agreement. Grantee will hold the City harmless for any damage to Grantee's facilities located in City right-of-way in the event Grantee's facilities are damaged as a result of construction or maintenance operations performed to the City's roadways, sidewalks or drainage facilities by the City or the City's agents, employees or contractors.

J. Upon the determination of Grantee, whenever practical, the Grantee will bore, rather than trench in the public rights-of-way, to minimize disturbance in paved areas. The Grantee assumes responsibility for establishing to the City Manager or his designee reasonable satisfaction that trenching, rather than boring, is the most practical means of equipment installation, taking into account street construction and maintenance, due either to cost, maintenance or liability. The City agrees that approval to trench will not be unreasonably withheld. The Grantee will perform work involving the disturbance of paved areas following approval from the City Manager, whose approval shall not be withheld or delayed unreasonably. The Grantee, upon prior notice before paving, shall install conduit under street intersections during their construction and otherwise install cable during the development of subdivisions to help avoid unnecessary subsequent cutting of streets.

SECTION 7. Franchise Fees.

A. In consideration of the grant of a franchise under this ordinance, the Grantee shall pay to the City annually three percent (3%) of the Grantee's gross revenues, defined as all revenues received by

the Grantee from all sources derived from or attributable to the operation of the cable television system and the cable television connections authorized by this franchise, including but not limited to installation fees, subscriber fees and pay television services but excluding any taxes or fees collected by the Grantee as required by law and wholly transmitted to a city, state, or federal government. Such payment shall be in addition to any other taxes, license fees or other fees or charges levied by the City on the Grantee, or agreed upon contractually elsewhere in this franchise or by separate agreement. The payment due to the City shall be computed and paid quarterly, based on the Grantee's fiscal year. The Grantee shall file with the City, within sixty (60) days after the close of each of the Grantee's fiscal quarters, a statement showing the gross revenues received by the Grantee during the immediately preceding quarter and the amount of the franchise fee then due. Payment of the franchise fee shall be remitted with such statement. A copy of the Grantee's income statement for the operation of the System herein authorized for the entire year, audited by an independent Certified Public Accountant, shall accompany the fourth-quarter payment for each year.

B. Grantee agrees that if at any time during the term of this Franchise any court of final determination rules that revenues derived from providing high-speed cable modem Internet services over Cable/Broadband Systems is in fact a cable service, as defined by the rules of the Federal Communications Commission, Grantee will, upon written request from Grantor, assess franchise fees to subscribers receiving high-speed cable modem Internet services from Grantee and include those assessed fees in other franchise fees collected and remitted to Grantor pursuant to Section 7a herein.

C. The City shall have the right to inspect and audit the Grantee's income records and the right to re-compute any amounts determined to be payable under this franchise. An audit of any fiscal year may be made at any time during the term of this franchise but limited only to the examination of the Grantee's books for the immediate preceding two (2) calendar years from the date of such audit request. Any additional amount due as a result of such audit, together with interest at the maximum interest rate permitted by law from the last day of the fiscal year from which such additional amount is due, shall be paid to the City within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report. The cost of such audit shall be borne by the Grantee only if it is determined that franchise fees should be increased by three percent (3%) or more of the City's annual franchise fee received in the immediate preceding two (2) calendar years from the date of such audit. The City shall have the right during the term of this franchise to conduct a second audit examination of the Grantee's books which may, at the Grantor's option, extend to the time period ending with the last audit period that reflected a deficiency in the Grantor's expense by an independent accounting firm to be mutually agreed upon between the parties. Such an audit shall consist of a representation letter based on an examination of the franchise fee payment schedule.

D. Acceptance of any payment by the City shall not be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any obligation of the Grantee hereunder.

SECTION 8. Liability and Indemnification.

A. The Grantee shall indemnify and hold the city harmless from any and all losses sustained by the City on account of any tax, penalty, fine, costs, expense, suit, judgment, execution, claim or demand whatsoever against the City resulting from the Grantee's construction, operation or maintenance of the Cable/Broadband System and/or any other negligent actions or omissions taken or not taken by the Grantee in connection with this franchise. The Grantee may, and if requested in writing by the City, undertake the defense of any claim, action or proceeding for which the City is indemnified under this Section, and, thereafter, the Grantee shall not be liable to the City for any legal or other expenses of the City other than reasonable costs subsequently incurred by the City at the request of the Grantee in connection with the defense thereof. The Grantee shall not be liable for the settlement of any such claim, action or proceeding effected without its prior written consent. The City shall give the Grantee prompt notice of any claim, action or proceeding against it upon which the City may seek indemnity hereunder.

B. The Grantee shall carry, throughout the term of this Franchise, personal and property damage liability insurance with insurance companies qualified to do business in the State of Texas. Such insurance shall show the City as an additional insured party. The amounts of such insurance to be carried for liability due to property damage shall be \$500,000 as to any one occurrence, and against liability due to injury or death of a person \$2,000,000 as to any one person and \$5,000,000 as to any one occurrence. A certificate or certificates of insurance shall be filed and maintained with the City during the term of this franchise. The Grantee agrees that, at the end of the fifth and tenth complete fiscal years following the Effective Date of this franchise, it will increase the amounts of insurance required to be maintained by the Grantee under this Section 8.B. in accordance with an opinion of a qualified insurance consultant agreed to by the City and the Grantee stating that such amounts should be increased.

SECTION 9. Performance Evaluations.

The City Council shall have the right under this franchise at any time to review the performance of the Grantee hereunder and to ascertain that all provisions of this franchise are being fully and faithfully carried out. The City Council may conduct formal performance evaluations of the Grantee's Cable/Broadband System and the Cable Services on or about the fifth, ninth and thirteenth anniversary of the Effective Date of this franchise. The City shall permit the Grantee to be involved in and comment on establishing the method and format of such evaluation prior to the evaluation.

SECTION 10. Revocation and Termination of Franchise.

A. The City shall have the right to revoke and terminate this franchise only if the Grantee has (1) taken or permitted an act described in Section 14.C or committed material violations of this franchise such as to indicate that the Grantee is unable or unwilling to comply with the material terms of this franchise, and the Grantee has failed to take reasonable steps to correct or desist from the violations within a reasonable time after due written notice has been given to the Grantee by the City, or (2) if the Grantee files in any court a petition of voluntary bankruptcy or is involuntarily adjudged bankrupt in any court of competent jurisdiction or is placed in receivership or trusteeship or (3) if the Grantee's title and interest in the Cable/Broadband System authorized by this franchise or in this franchise is taken by judicial or nonjudicial execution or is forfeited or subject to forfeiture before any court.

B. If at any time the City has reason to believe that the Grantee is in jeopardy of having this franchise revoked and terminated for any reason, the City shall so notify the Grantee in writing, and order the Grantee to show cause before the City Council within thirty (30) days of such notice why such revocation or termination should not take place. If the Grantee fails to show cause, or in any case if the City reasonably finds (1) that any of the causes set forth in Section 10a are applicable, (2) that adequate notice has previously been given and (3) that the Grantee has failed to correct the defects or violations as required, the City may, by majority vote of the City Council, declare this franchise to be revoked and terminated.

SECTION 11. Customer Service Standards.

A. The Grantee shall maintain an office reasonably accessible to residents of the City who are subscribers of the Cable/Broadband System and which shall be open during normal business hours, have a listed telephone number and be so operated that complaints and requests for repairs or equipment adjustments may be received at any time. The Grantee shall provide for regular billing of accounts.

B. The Grantee shall furnish to each new subscriber, at the time service is installed, a written statement that clearly sets forth procedures for placing trouble calls or requesting equipment adjustments, and an annual reminder that the subscriber can call or write the City if the Grantee fails to respond to the subscriber's request for installation, service or equipment adjustment within a reasonable period of time.

C. The Grantee shall respond to requests for service on the same business day if the request is received prior to 2:00 p.m. in the case of a system outage or service interruption. In no event shall the response time for calls received later than 2:00 p.m. exceed twenty-seven (27) hours.

D. The Grantee may interrupt Cable/Broadband System service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations only

after giving notice to subscribers that Cable Service will be interrupted. Cable Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday or Sunday, or the night preceding a holiday.

E. Whenever service to any subscriber of the Cable/Broadband System is interrupted for any period of time in excess of twenty-four (24) consecutive hours, or the Grantee violates the service standards then in effect recommended by the National Cable Television Association, and such interruption or violation is known to the Grantee in addition to all other refunds and penalties due pursuant to federal law or regulation, the subscriber, upon written request, shall receive a rebate of one-thirtieth (1/30th) of his monthly subscription fee for each day or part thereof from the time service is interrupted or service standards are violated until service is restored or corrected. For purposes of this Section, "interruption of service" means that a subscriber is not receiving all subscribed-for services.

F. The Grantee shall maintain records listing date and time of trouble and service complaints, identifying the subscriber and describing the nature of each complaint and what action was taken by the Grantee in response thereto. Such records shall be available for inspection by a representative of the City at any time during regular business hours. Upon written request of the City, the Grantee shall use its best efforts to develop a summary of such report for each fiscal quarter for inclusion with the payment and report due under Section 7a.

G. The programming available on the Cable/Broadband System on the Effective Date are identified on Exhibit A attached hereto. The Grantee shall file all changes in channel space allocation and rates with the City at least thirty (30) days' in advance of the effective date of such change and shall provide customers of the Cable/Broadband System with at least thirty (30) days' prior notice of channel space allocation and rate changes.

SECTION 12. Technical Standards and Reports.

A. Technical standards shall be maintained in compliance with Federal Communications Commission Rules and Regulations 47 C.F.R., Part 76, Subpart K, as amended from time to time.

B. If, during the term of this franchise, Grantee develops, builds or obtains the ability to provide other forms of cable television services not currently being provided, and such new services are offered and provided to either residential or commercial subscribers in the City, and if such services are subscribed to by residential or commercial subscribers, then, Grantee shall provide at least one (1) service connection to provide such service to Grantor's facilities as set forth in Section 18(a) herein. Provided however, that Grantee shall be under no obligation to continue to provide such new service(s) to Grantor if Grantee ceases to offer or provide such new service(s) to either resident or commercial subscribers in the City.

C. The Grantee shall advise the City with its quarterly report of any major changes in federal

and/or Texas law and regulation relating to the cable industry and any significant advances in technology in the cable industry relating to the quality and quantity of services which may be available and shall promptly inform the City of the implementation of any interconnect with another Cable/Broadband System.

D. The Grantee shall arrange for its representatives to meet at least once each fiscal year with representatives of the City to provide additional information, which the Grantee believes, is useful to the City in connection with the Cable/Broadband System and to respond to inquiries from the City in connection with the Cable/Broadband System and this franchise.

SECTION 13. Parental Control of Programs.

The City and the Grantee agree that public concern has been expressed regarding the reception in subscribers' homes of television programs that are offensive to some persons, that are intended for viewing by adults and that are believed by some persons to be detrimental to the community's cultural values. Neither the City nor the Grantee wishes or intends to regulate the content of television or radio programs, or any other services obtained from other sources and retransmitted over the Cable/Broadband System. Nevertheless, the City and the Grantee agree that a public interest exists and that there is a need for certain services to permit parents to exercise greater control over the television programs watched by their children. Therefore, the Grantee agrees to provide a locking device to any subscriber of the Cable/Broadband System, at the subscriber's request, which when locked electronically or by a key will prevent the television set from being tuned to any channel designated by the subscriber. The Grantee shall have the right to charge an amount equal to its cost of providing said locking device.

SECTION 14. Books and Records.

A. The Grantee's books of account and records of its business and operations under and in connection with this franchise shall be maintained and available at the Grantee's office in San Antonio, Texas.

B. The City shall have access upon reasonable advance written notice and at reasonable times to review all of the Grantee's books of account and records of its business and operations in Terrell Hills to the extent reasonably necessary to enforce the terms of this franchise.

C. Any intentional false entry in the books of account or records of the Grantee or any intentional false statement in the reports to the City as to a material fact, knowingly made by the Grantee, shall constitute a major violation of this franchise. Unintentional errors in such books and reports shall not constitute a violation.

SECTION 15. Severability.

If any portion of this franchise is for any reason held invalid or unconstitutional by a court of competent jurisdiction or is superseded or preempted by any State of Texas or federal law or regulation, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity or effectiveness of the remaining portions hereof.

SECTION 16. Force Majeure.

When any provision or condition to be performed by the grantee under the terms of this franchise is prevented, delayed or interrupted by lack of labor or materials caused by conditions beyond the reasonable control of the Grantee, or by fire, storm, flood, war, rebellion, insurrection, sabotage, riot or strike, or by failure of carriers to transport, make delivery or furnish facilities for transportation, or as a result of some law, order, rule, regulation or necessity of governmental authority, whether local, state or federal, or as the result of some law, order rule, regulation or necessity of governmental authority, whether local, state or federal, or as the result of the filing of a suit by the City against the Grantee (unless the Grantee is ultimately determined in such litigation to have been in material violation of this franchise and Grantee has failed to cure such breach), in which the Grantee's franchise may be affected, or as a result of any cause beyond the reasonable control of the Grantee, this franchise shall remain in full force and effect. The Grantee shall not be liable for any breach of any express or implied covenant or obligation under this franchise when the same is prevented, delayed or interrupted, provided that Grantee shall make a good faith effort to carry out or complete, as the case may be, its duties and obligations hereunder in a timely manner.

SECTION 17. Regulation

The City shall automatically have all of the rights, benefits and powers granted to municipalities under federal or State of Texas cable television laws or regulations in effect and as amended during the term of this franchise, including specifically all powers or rights to regulate cable television rates, services and programming, as if such laws and regulations were incorporated herein. Any other matters permitted by such enactments or amendments shall be negotiated in good faith by the City and the Grantee.

SECTION 18. Publicly Owned or Leased Facilities and Public Service Broadcasting.

- A. The Grantee shall provide at least one service connection in each of the following locations:
 - 5. all municipal buildings or facilities as may be now or hereinafter designated by the City Manager or his agent;
 - 6. all public and parochial school buildings as may be designated now or hereinafter by the City Manager; and

Such service connections shall be provided to buildings as designated by the City Manager within at

least three (3) months of the date service is available to such building. In addition, a converter to provide the capability of receiving basic and expanded basic service only shall be provided to each such location. Connection and services provided hereunder shall be for public non-commercial use only.

B. No charge shall be made by the Grantee for the installation, disconnection (when reasonably requested) reconnection (when reasonably requested), monthly services and/or maintenance of equipment authorized by Section 18.A., provided, however, Grantee shall not be required to make such installations if line extension in excess of 300 feet would be required.

C. Grantee agrees to include in its Cable/Broadband System a regionally-operated Emergency Broadcast System with the capability to introduce an audio and video message on the Cable/Broadband System in times of public emergency, and to provide that such override may be introduced from a City facility.

D. The Grantee shall provide locally-originated programming each week and shall meet or exceed all such programming requirements or recommendations of the Federal Communications Commission or applicable State of Texas or federal law or regulation. The Grantee may produce such programming itself or may rely on local groups to produce such programming with technical assistance from the Grantee. The Grantee agrees to permit the City, at its options, to participate in the formation and operation of a broadly representative advisory board to help implement community involvement in local origination production and use of public access channels. The Grantee shall provide and maintain a studio in San Antonio, Texas or in another location at Grantee's option reasonably accessible to residents of the City for the purpose of local program production and origination.

SECTION 19. Waiver

The waiver by either party of a breach or violation of any provision of this agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of this agreement. To the contrary, such conduct shall not be considered a waiver to either party to future performance of any such provisions of this agreement, and the obligations of the parties to such future performance shall continue in full force and effect.
(Ord. 1068, 10-9-00)

Sec. 4-3, Franchise Agreement for Electric and Gas Service

SECTION 1. That the City of San Antonio, a municipal corporation of the State of Texas, and its assigns, hereinafter called "Grantee", is hereby granted, for a term of twenty years from and after February 1, 1988, the right to construct maintain and operate within the City of Terrell Hills, Bexar County, Texas, hereinafter called "City", electric and gas transmission and distribution facilities for the purposes of furnishing said City and the inhabitants thereof and adjacent thereto, electric energy

and gas (natural and/or manufactured) for lights, power, heat and such other uses to which electric energy and gas is now or may be hereafter applied; and for such purposes the said Grantee and its assigns is hereby given the right to place, construct, lay and maintain in, on and under the public streets, alleys and public ways of grantor City at such locations as may conform to valid ordinances and regulations of the City, for the period aforesaid, all necessary poles, crossbeams, brackets, wires, conduits, mains, pipes, manholes and other apparatus and appliances requisite or proper for the operation of electric and gas transmission and distribution systems.

SECTION 2. The rights, privileges and permits herein granted shall at all times be subject to the valid ordinances and regulations of the said City regulating and controlling the location of electric poles and facilities, and gas mains, pipes and facilities, and to all other present and future valid ordinances and regulations of the City.

SECTION 3. Said Grantee and its assigns, so long as any of the rights granted hereunder are exercised, shall pay to the City as a rental charge for the use of said streets, alleys and public ways two percent of its gross receipts from the sale of electric energy and gas in grantor City, such payment to be in lieu of and shall cover all charges and impositions of every kind based upon the transmission, distribution or sale of electric energy and gas and the use of streets, alleys and public ways of the City.

SECTION 4. On or before one month after the close of each three-month period after the date of this Ordinance, and consistent with the Grantee's quarterly system which begins on February 1st of each year, the Grantee shall furnish payment to grantor City of an amount equal to two percent of the gross receipts from the sale of electricity and gas in the grantor City during such three-month period, and the grantor City shall be entitled, through its representatives, during normal working hours to audit all books and records relating to such receipts.

SECTION 5. This Ordinance shall not become effective as to any of its terms unless within thirty days after its passage it is accepted in writing by the City Public Service Board of the City of San Antonio acting for the Grantee.

(Ord. 760, 1-11-88)

* * * * *

Sec. 4-4, Electric and Gas Utilities

SECTION 1. Description. The City of San Antonio, acting by and through the City Public Service Board, ("CPS"), is granted a twenty-year franchise Commencing June 11, 1990, for transmission, distribution and sale of electricity and gas within the City of Terrell Hills ("City"). CPS may construct, operate and maintain in, upon, over, under, and across the present and future streets, alleys and public ways and places within the City all the facilities CPS deems reasonably necessary for the rendition of safe, reliable and economical electric and gas service ("CPS Facilities.").

SECTION 2. Payment for Street Rental. CPS shall make a payment for street rental to the City in the amount of three percent (3%) of CPS's gross receipts from the sale of electricity and gas within the City. "Gross receipts" excludes uncollectibles. The payment for street rental shall be treated by CPS as a system-wide cost of service, and shall not be identified separately on the customer bill.

2.1. The payment for street rental will reflect CPS's gross receipts on a quarterly basis and will be due the City within thirty days after the close of each quarter in CPS's fiscal year.

SECTION 3. Limitation on Assessments. The street rental charge is in lieu of all other fees or charges and the City shall not impose or collect, nor attempt to impose or collect, any charge or fee in connection with the construction, operation and maintenance of CPS Facilities within the City other than the payment for street rental provided for under SECTION 2 above.

SECTION 4. Audits. Upon written notice to CPS, the City shall be entitled, during normal working hours and at reasonable intervals during the term of this agreement, to audit records of CPS supporting the payment for street rental, including customer lists.

SECTION 5. Construction, Operation and Maintenance of Facilities. CPS may open cut streets, curbs and sidewalks, bore, or utilize any other methods it deems reasonably necessary to construct, operate and maintain CPS Facilities within the City. The design and construction of CPS Facilities and CPS's access to and restoration of paved surfaces shall be in accordance with CPS's design and construction standards, which CPS shall make available for review by the City upon request.

5.1 Prior to starting any work, CPS shall give ten days written notice of the scope and duration of the work to the official designated by the City. Prior notice may be reduced or waived by the City in order to allow the work to proceed. In the event CPS determines there is an emergency, CPS may act without any prior notice, but shall provide notice to the City as soon as practicable.

5.2 The surface of any street, alley, or public way or places disturbed by CPS shall be restored by CPS within a reasonable time after the completion of the work. No street, alley, or public way or place shall be encumbered by CPS for a longer period than shall be reasonably necessary to execute the work. CPS shall continue to maintain the integrity of the portion of any paved surface over CPS Facilities, as restored by CPS during the work, as long as CPS Facilities remain in use by CPS at that location. CPS shall have no responsibility for any injuries to landscaping or improvements located over, under, or around CPS Facilities, but shall use reasonable care to avoid such injuries.

SECTION 6. Civic Improvements. The City shall give reasonable prior written notice of street repaving, widening or straightening projects to CPS. CPS shall, at its expense, relocate CPS Facilities in connection with activities reasonably related to the City's widening or straightening of streets.

SECTION 7. Use of Pole Space. CPS shall permit the City to use existing CPS poles for the City's

communications conductors used for the City's governmental purposes, to the extent CPS determines space is available. Such use shall be subject to the City's execution of CPS's form of contract for pole attachment and payment of the CPS fees applicable to such service.

SECTION 8. Rate Schedules. At least every two years, CPS shall analyze the City's pattern of electrical and gas consumption, and shall offer to serve the City's municipal load under the rate schedules most favorable to the City, in accordance with CPS's Rules and Regulations applying to Electric and Gas Service.

SECTION 9. Furnishing of Information. Upon the City's request, CPS will make available to the City meeting agendas for City Public Service Board meetings, information packets, and rate filings, and will arrange periodic sessions for presentations by and discussions with knowledgeable CPS employees.

SECTION 10. Uniform Franchise Benefits. If at any time during the term of this agreement CPS enters into a franchise agreement for the provision of electric or gas service which provides increased financial benefits to any incorporated community in excess of the percentages stated in SECTION 2, CPS shall provide written notice of such event to the City. At the option of the City, which must be exercised in writing within 30 days after the City's receipt of notice from CPS, this agreement shall be replaced with the form of franchise agreement entered into with such other incorporated community. The new agreement shall be effective from the same date shown in the franchise with such other incorporated community.

SECTION 11. Effective Date. This franchise agreement shall become effective upon its adoption by the City in the form authorized by the City Public Service Board. It shall supersede and take precedence over inconsistent ordinances, resolutions, or regulations hereafter or heretofore passed by the City. The payments provided for in SECTION 2 shall be effective for CPS's gross receipts from electric and gas sales within the City commencing March 1, 1990, if this franchise agreement is adopted by the City on or before June 30, 1990, and otherwise shall be effective for CPS's gross receipts from electric and gas sales within the City commencing the first day of the month following adoption by the City.

SECTION 12. Headings. The headings of the sections in this agreement are for organizational purposes only. They have no separate meaning and shall not be read as affecting the language of the sections.

SECTION 13. Continuation of Agreement. This agreement shall remain in effect beyond the expiration of its term until a new agreement becomes effective between the parties or until this agreement is terminated by either party upon 180 days prior written notice, which notice may precede the expiration date by not more than 180 days.

SECTION 14. Assignment. This agreement may be assigned by CPS upon mutual written

agreement of the City and CPS.

SECTION 15. Liability. It is expressly understood and agreed by and between the City and CPS that CPS shall indemnify and hold the City harmless from any and all loss sustained by the City on account of any suit, judgment, claim or demand whatsoever to the extent such loss is caused by negligence on the part of CPS, its agents or employees in the performance of services under this Franchise Agreement.*

(Ord. 814, 6-11-90)

*(Added by Ord. 818, 7-9-90)

* * * * *

Sec. 4-5, Wrecker and Impounding Services

1, That, the Alamo Wrecker Co., 1119 Avenue B., San Antonio, Texas, is hereby designated as an official vehicle impound facility of the City of Terrell Hills, Excepted will be vehicles held as evidence in criminal cases which will continue to be impounded at 5100 N. New Braunfels Ave., location of the Terrell Hills Police Department,

2 The City Council hereby authorizes Mayor George C. Mead to enter into a contract for impounding and towing services with Alamo Wrecker Company

CONTRACT FOR TOWING AND IMPOUNDMENT OF VEHICLES

STATE OF TEXAS

COUNTY OF BEXAR

This agreement is made and entered into by and between the City of Terrell Hills acting herein by and through its governing body, and Milton Neckar, owner and operator of Alamo Wrecker Company, 122 Teakwood, San Antonio, Texas, and will become effective on the 11th day of May, 1982.

1. The City of Terrell Hills hereby appoints, and Alamo Wrecker Co. hereby accepts, appointment as an impound facility for the motor vehicles authorized by the Police Department of the City of Terrell Hills to be impounded.

2. When requested by the Police Department of the City of Terrell Hills, Alamo Wrecker Co. agrees to provide towing and vehicle impoundment and storage for the City of Terrell Hills, Vehicles will be stored in a lot controlled by the Alamo Wrecker Co., at 1119 Avenue B., San Antonio, Texas, which lot is enclosed by a chain-link fence with locked gate.

3. Current charges which shall remain in effect for at least one year from date of this agreement are

as follows:

Towing of wrecked cars	\$35.00
Removing of drive shaft	15.00
Dolly cars	15.00
Changing wheels	5.00
Abandoned vehicles	25.00
Vehicles towed to Terrell Hills lot	25.00
Storage (per day)	5.00

No charge will be made by Alamo Wrecker Co. for towing on police cars, fire trucks or garbage trucks belonging to the City of Terrell Hills.

4. All vehicles shall be inventoried by police officer before they are released to Alamo Wrecker Co. for towing and impoundment. A copy of the inventory will be given to Alamo Wrecker Co. Alamo Wrecker co. will accept responsibility for security of same until vehicle is released. Owners of vehicles shall present required proof of ownership to the Terrell Hills Police Department when seeking to redeem the vehicle, Owner will then be given a release to be taken to Alamo Wrecker Co, to redeem the vehicle, Charges will be collected by Alamo Wrecker Co., at the time of release, Towing charges on vehicles towed to and released from the impound facility at the Terrell Hills City Hall will be paid to Alamo Wrecker Co. by Terrell Hills Police Department when the owner redeems the vehicle.

5. At the end of one year from effective date of this agreement either party shall have the option to terminate this agreement by giving written notice of termination, Alamo Wrecker Co. shall have option after one year to request change in fees. If neither party chooses to exercise this option this agreement shall continue in force year by year.
(Ord. 629, 5-10-82)

* * * * *

Sec. 4-10, Sewage

1. A contract, a copy of which is annexed to this ordinance and made a part hereof by reference, between the City of Terrell Hills, Texas and the City of San Antonio, Texas for the transportation and treatment of sewage and the performance of Certain other services by the City of San Antonio in behalf of the City of Terrell Hills be and the same hereby is in all things approved.

2. The Mayor and the Secretary-Manager be and they are hereby authorized, empowered and directed to execute such contract in behalf of the City of Terrell Hills.

3. Upon the execution of said agreement by the duly authorized representatives of the City of San

Antonio, the City of Terrell Hills be bound by the provisions thereof and the obligations undertaken by the City of Terrell Hills therein be carried out and performed under the direction of the Secretary-Manager.

(Ord. No 314, 8-14-72)

* * * * *

Sec. 4-11, Sewer Collection Charge

1. A contract, a copy of which is annexed to this ordinance and made a part hereof by reference, between the City of Terrell Hills and the Water Works Board of Trustees of San Antonio be and the same is hereby in all things approved.

2. The Mayor and the Secretary-Manager be and they are hereby authorized, directed and empowered to execute such contract in behalf of the City.

3. Upon execution of said agreement by both parties, the City of Terrell Hills be bound by the provisions thereof and the obligations undertaken by the City therein be carried out and performed under the direction of the Secretary-Manager.

(Ord. 201, 3-13-67)

* * * * *

Sec. 4-12, Interlocal Agreement Between the City of Terrell Hills and the San Antonio Water System

This Interlocal Agreement (the "Agreement") is executed by and between the City of Terrell Hills, acting by and through its Mayor (the "City") and the San Antonio Water System, a wholly owned municipal utility and an agency of the City of San Antonio (the "System"; the City and the System are referred to collectively as the "Parties") acting by and through its President/Chief Executive Officer.

Recitals

Whereas, the City executed a Wholesale Sewer Service Contract (the "Contract") with the System on August 10,1998; and

Whereas, §14 of the Contract grants the City the option to delegate to the System the authority to enforce the City of San Antonio Industrial Waste and Liquid Waste Transportation and Disposal Regulations ordinances codified as §34-471 through and including §34-485 and §34-511 through and including §34-524 of the City of San Antonio Code of Ordinances (the "Ordinances") within the city limits of the City; and

Whereas, pursuant to the terms of this Agreement the System will have authority to enforce the Ordinances within the corporate limits of the City; and

Whereas, to promote and protect the health and safety of the citizens of the City, it is in the best interest of the City to permit the system to enforce the Ordinances within the city limits of the City.

Now therefore, the Parties agree as follows:

- 1.00 City of San Antonio Industrial Waste and Liquid Waste Transportation and Disposal Regulations Ordinances.
- 1.01 The System will supply the City with current copies of the Ordinances, as amended. Copies of the Ordinances are attached hereto as Exhibit “A”.
- 1.02 The System will, upon written request from the City, supply System staff to assist in answering any questions that the City or its citizens may have regarding the Ordinances and the procedures that the System will follow to implement and enforce the Ordinances. The City’s request for assistance by System staff will not be unduly burdensome. On request by the System, the City and the System will mutually establish a schedule detailing the type of assistance to be provided.
- 1.03 The terms, provisions and conditions of the Ordinances will apply and be enforceable within the city limits of the City. The City hereby delegates to the System the authority to enforce the Ordinances within the city limits of the City.
- 1.04 Pursuant to the terms of a City ordinance that has been passed and approved by the City, the Parties agree that:
 - a. Any person or entity within the city limits of the City that is an Authorized representative of industrial user, an Entity, and Industrial user, a Significant industrial user, a User, a Person, an Existing source, a New source, a categorical user or a permittee, as those terms are used or defined in City of San Antonio Code of Ordinances §34-471 through and including §34-485, is required to perform all acts required of such a person or entity pursuant to the provisions of City of San Antonio Code of Ordinances §34-471 through and including §34-485.
 - b. Any person or entity within the city limits of the City that is an Authorized representative of industrial user, an Entity, an Industrial user, a Significant industrial user, a User, a Person, an Existing source, a New source, a categorical user or a permittee, as those terms are used or defined in City of San Antonio Code of Ordinances §34-471 through and including §34-485, is required to pay all fees

required of such a person or entity pursuant to the provisions of City of San Antonio Code of Ordinances §34-471 through and including §34-485.

- c. Any person or entity within the city limits of the City that is an Authorized representative of industrial user, an Entity, an Industrial user, a Significant industrial user, a User, a Person, an Existing source, a New source, a categorical user or a permittee, as those terms are used or defined in City of San Antonio Code of Ordinances §34-471 through and including §34-485, is subject to all prohibitions, limitations, restrictions and requirements applicable to such a person or entity that are contained in City of San Antonio Code of Ordinances §34-471 through and including §34-485.
- d. Any person or entity within the city limits of the City that is an Authorized representative of industrial user, an Entity, an Industrial user, a Significant industrial user, a User, a Person, an Existing source, a New source, a categorical user or a permittee, as those terms are used or defined in City of San Antonio Code of Ordinances §34-471 through and including §34-485, is subject to all civil and criminal penalties applicable to such a person or entity that are contained in City of San Antonio Code of Ordinances §34-471 through and including §34-485.
- e. The City authorizes the System to exercise all rights, to perform all functions, responsibilities and duties, and to do any act performable by the Control authority, SAWS, the City, the San Antonio Water System, a Publicly owned treatment works (“POTW”), the Department, or the director, as those terms are used or defined in City of San Antonio Code of Ordinances §34-471 through and including §34-485, within the city limits of the City.
- f. Any person or entity within the city limits of the City that is a Person, applicant, liquid waste transporter, Permittee, liquid waste generator, Disposal site operator, Generator, SAWS permit holder, Commercial vehicle wash, liquid waster hauler, Manager, Mobile waste generator, Vehicle wash grit drying facility, or Transporter, as those terms are used or defined in City of San Antonio Code of Ordinances §34-511 through and including §34-524, is required to perform all acts required of such a person or entity pursuant to the provisions of City of San Antonio Code of Ordinances §34-511 through and including §34-524.
- g. Any person or entity within the city limits of the City that is a Person, applicant, liquid waste transporter, Permittee, liquid waste generator, Disposal site operator, Generator, SAWS permit holder, Commercial vehicle wash, liquid waste hauler, Manager, Mobile waste generator, Vehicle wash grit drying facility, or Transporter, as those terms are used or defined in City of San Antonio Code of Ordinances §34-511 through and including §34-524, is required to pay all fees required of such a

person or entity pursuant to the provisions of City of San Antonio Code of Ordinances §34-511 through and including §34-524.

- h. Any person or entity within the city limits of the City that is a Person, applicant, liquid waste transporter, Permittee, liquid waste generator, Disposal site operator, Generator, SAWS permit holder, Commercial vehicle wash, liquid waste hauler, Manager, Mobile waste generator, Vehicle wash grit drying facility, or Transporter, as those terms are used or defined in City of San Antonio Code of Ordinances §34-511 through and including §34-524, is subject to all prohibitions, limitations, restrictions and requirements applicable to such a person or entity that are contained in City of San Antonio Code of Ordinances §34-511 through and including §34-524.
- i. Any person or entity within the city limits of the City that is a Person, applicant, liquid waste transporter, Permittee, liquid waste generator, Disposal site operator, Generator, SAWS permit holder, Commercial vehicle wash, liquid waste hauler, Manager, Mobile waste generator, Vehicle wash grit drying facility, or Transporter, as those terms are used or defined in City of San Antonio Code of Ordinances §34-511 through and including §34-524, is subject to all civil and criminal penalties applicable to such a person or entity that are contained in City of San Antonio Code of Ordinances §34-511 through and including §34-524.
- j. The City authorizes the System to exercise all rights, to perform all functions, responsibilities and duties, and to do any act performable by SAWS, the Department, the City, the Director, the CEO or the San Antonio Water System, as those terms are used or defined in City of San Antonio Code of Ordinances §34-511 through and including §34-524, within the city limits of the City.

2.00 City Staff Assistance.

The System may request the City in writing to provide assistance related to implementing the Ordinances within the city limits of the City. The System’s request for assistance will not be unduly burdensome. The City will, to the extent reasonably necessary, assist in such activities.

3.00 Recognition of Federal and Other Requirements.

3.01 This section shall not supercede, limit or reduce the duties or responsibilities of the City set forth in §15.00 of the Contract.

4.00 Duration.

The duration of the Agreement shall coincide with the duration of the Contract, and the

renewal term of this Agreement will coincide with the renewal term of the Contract.

5.00 Miscellaneous Provisions.

5.01 Assignment. No assignment of this Agreement in whole or in part for any purpose shall be made by either the City or the System without the prior written consent of the other Party. Subject to this limitation, this Agreement shall bind and inures to the benefit of the successors and assigns of the Parties.

5.02 Notices. All written notices required by the terms of this Agreement shall be in writing and deposited in the United States mail addressed to a Party at its respective address set forth below:

If to City: City of Terrell Hills
City Manager
5100 N. New Braunfels Avenue
San Antonio, Texas 78209

If to System: San Antonio Water System
Eugene E. Habiger, General, USAF (Ret.)
President/Chief Executive Officer
P O Box 2449
San Antonio, Texas 78298-2449

An address may be changed by either Party by notice in writing to the other Party.

5.03 Severability. If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining terms, provisions or paragraphs of the Agreement, but will be confined to the terms or provisions of the Agreement held legally invalid.

5.04 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supercedes all prior contracts, understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement.

5.06 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas.

5.07 Execution in Counterparts. This Agreement will be executed in two identical counterparts, each of which shall be deemed to be an original and both of which together shall be deemed to be one and the same instrument.

5.08 Amendments. This Agreement may not be waived, modified, altered, or amended except by an instrument or instruments in writing signed by the Party against whom enforcement of any such waiver, alteration, modification or amendment is asserted.

5.09 Authority to Enter into Agreement. The City represents and affirms that it has the authority to enter into this Agreement pursuant to an ordinance adopted by its City Council and that its Mayor has the authority to execute this Agreement.

The System’s Board hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted resolution of its Board of Trustees and that its President/Chief Executive Officer has the authority to execute this Agreement.

5.10 Effective Date. The effective date of this Agreement shall be the later date in time of the signatory date set forth below: (3-17-03)

/s/J. Bradford Camp, Mayor and Eugene E. Habiger, President/Chief Executive Officer
(Ord. 1133, 3-10-03)

Sec. 4-15, Water Service Contract

1. This Ordinance makes and manifests a contract between the City of Terrell Hills, Texas, hereinafter called “City,” and the City of San Antonio acting through its Water Works Board of Trustees, hereinafter called “Board” in words and figures as follows, to-wit:

W I T N E S S E T H:

Section 1. Grant of Authority. City does hereby grant Board, its successors and assigns, the right and privilege to construct, lay, maintain, operate, use, extend, remove, replace, and repair, in, under, over, across, and along any and all streets, avenues, alleys, utility easements, thoroughfares, roads, highways, viaducts, and bridges within the corporate limits of the City as at now exists or may hereafter exist through annexation or acquisition during the life of this contract, a system of pipes, water mains, laterals, service lines, hydrants, feeders, regulators, meters, fixtures, reservoirs, tanks, connections, and attachments, and other desirable instruments and appurtenances necessary or proper for the purpose of transporting, storing, distributing, supplying, and selling water for domestic, commercial, municipal, and fire protection purposes and for any other purposes for which water may now or hereafter be used, to the City and its inhabitants or any other person or persons within or without the corporate boundaries of the City.

Section 2. Compliance with Laws and Ordinances. The Board shall, at all times during the term of this agreement, be subject to all lawful exercise of police power by the City and to such reasonable regulation not inconsistent with this contract as the City shall hereinafter by ordinance provide.

Section 3. Consideration. In consideration of the rights conferred herein, the Board agrees to furnish

potable water which meets the applicable quality standards of the Texas State Department of Health for domestic, commercial, municipal, and fire protection purposes to the citizens of Terrell Hills, Texas, under the terms and conditions of this contract. In accordance with the Board's present replacement and improvement policy, and as it may be amended from time to time, the Board agrees that it will make such water main replacements and improvements to its system in the City of Terrell Hills necessary to upgrade the system to the sizes and standards established by the Board's "Criteria for Domestic and Commercial Water Supply and Distribution" which is attached hereto and incorporated herein by reference for all purposes.

Section 4. Rates. In the operation of the Board's water system, Board, without unlawful discrimination between customer and applicant, existing or future, shall operate the same in the same substantial manner and under the terms, practices, conditions, fees, tolls, and charges as it has heretofore or may hereafter prescribe for its customers inside* the city limits of the City of San Antonio with the usual practices incident to the construction and operation of an efficient water supply and distribution system and will supply and install standard meters making its usual charges therefor and standard equipment manufactured for the purpose of constructing, maintaining, and operating a water supply and distribution system. The initial rates to be charged by Board to its customers in the City of Terrell Hills shall be those uniform rates applicable to inside-city* customers set forth in Ordinance No. 34696 of the City of San Antonio, Texas, as now in effect, and the City hereby adopts same as being reasonable based upon the fair value of those portions of the utility system necessary to render efficient service to its citizens. As costs of service increase or decrease, in either event, rates, fees and charges shall be adjusted accordingly upon request of City or Board, after notice and a hearing before the City Council, so that such rates, fees and charges shall not exceed those necessary to allow a fair and reasonable return to the Board based upon the fair value of the property of the Board devoted to furnishing water service to the City's inhabitants and excluding from the value any items so prohibited by the Charter of the City of Terrell Hills.

The City shall have the right at no charge to it to use the Board's fire hydrants for fire fighting purposes only. Any other use of water from fire hydrants will be paid for by City at the Board's established rates. Prior to such other use, the Board will, upon request of City, set a fire hydrant meter to measure consumption.

The Board agrees to pay as consideration for this agreement a franchise fee of two per cent (2%) per annum of the gross receipts for water service paid by customers of the Board within the City of Terrell Hills. Payment of the franchise fee will be made on an annual basis, the first payment to be made within 30 days following the first anniversary date of this contract with subsequent annual payments to be made in the same manner.

Section 5. Non-transferability of Agreement Rights. The Board shall not sell or transfer its systems within the City of Terrell Hills to another public utility or private utility, nor transfer any rights under this agreement to any other person or corporation without City approval.

Section 6. Terms of Agreement. These rights herein granted shall take effect and be in force sixty (60) days after the Third Reading and final passage, as required by law, and continue for a period of

thirty (30) years therefrom. At the option of either the City or the Board, this contract may be renewed for successive thirty (30) year periods with the mutual written consent of the other party thereto.

Section 7. Separability. If any section, sentence, clause, or paragraph of this ordinance is for any reason held to be illegal or invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance. All ordinances and agreements directly in conflict herewith are hereby repealed.

Section 8. Street Occupancy.

(a) Location. All water mains, service lines, pipes, and appurtenances constructed and maintained by the Board within the City shall be located within streets, alleys, easements, and other public ways and places.

(b) Maintenance and Relocation. If in the event at any time during the term of this agreement the City shall elect to alter or change the grade of facilities, the Board shall be entitled to reasonable notice thereof. The costs of relocation due to the City's action of any mains or other facilities installed by the Board after the effective date of this contract shall be borne by the Board. The costs of relocation due to the City's action of any mains or other facilities installed prior to the effective date of this contract shall be borne by the City.

(c) Board's Rights as to Construction and Maintenance. In order to adequately maintain, service, construct, reconstruct, relocate, or in any way inspect Board facilities, Board shall have the right to cut or excavate in or across all alleys, easements, public streets, and public ways in which said facilities are located. Board agrees to give City reasonable notice of said construction, relocation, or maintenance in order to facilitate arrangements for the flow of traffic when necessary. If there is any cut or excavation made in City's streets, alleys, or public ways by reason of the construction or operation of the system through breakage, bursting, leakage of mains or replacements and extensions, such cuts or excavations in the streets, alleys, or public ways shall be restored to their original state of repair at Board's expense.

Section 9. Preferential or Discriminatory Practices Prohibited. The Board shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person or corporation, or subject any person or corporation to any prejudice or disadvantage, provided that nothing in this agreement shall be deemed to prohibit the establishment of a graduated scale of charges in classified rate schedules to which any customer within such classification would be entitled.

Section 10. Collections. Collections of monthly charges for water service rendered by Board to individual customers within City will be pursuant to the terms of Ordinance No. 34696 passed and approved by the City Council of the City of San Antonio August 4, 1966, as may be amended, and which is attached hereto and incorporated herein by reference for all purposes.

Section 11. Regulations. All regulations adopted by the Water Works Board of Trustees of the City of San Antonio including customer deposit requirements shall be in full force and effect in the furnishing of services by Board under this agreement except where such regulations shall be in conflict with the provisions of this ordinance. A copy of current Board "Regulations for Water System Extension and Service Line Installations is attached hereto and incorporated herein by reference for all purposes.

Section 12. Design Standards and Criteria. All installations and extensions to the water system of the Board within the City of Terrell Hills, Texas, shall comply with the Board's "Criteria for Domestic and Commercial Water Supply and Distribution," a copy of which is on file with the City Clerks of Terrell Hills and San Antonio.

Section 13. Interruption of Services. The Board does not guarantee uninterrupted service to the City or Board' 8 customers therein and will not be liable for any such interruption. However, the Board will exert reasonable diligence and care to prevent service interruption and will expeditiously restore service as required.

Section 14. Indemnity. Board shall hold City harmless from all expense or liability for any unlawful or negligent act of Board.

Section 15. As Provided by Section 7 of Article 9 of the Charter of the City of Terrell Hills. In the event the Board shall fail to render efficient service at reasonable rates to the citizens of the City of Terrell Hills or should it fail to maintain the utility system serving those citizens in good repair, then in either event, City may declare this Franchise Agreement forfeited and null and void by giving reasonable notice to the Board.

Section 16. Inspection of Books and Reports. As a condition of the grant of this franchise Board agrees to permit inspection of its books, to produce records and file such reports as may be required by City pursuant to the provisions of Section 8 of the Charter of the City of Terrell Hills.

Section 17. No Exclusive Rights. Nothing herein contained shall ever be held or considered as conferring upon Board and its successors and assigns any exclusive rights or privileges of any nature whatsoever.

Section 18. Notices. Written notices shall be sufficient to notify Board if mailed by certified mail to General Manager, City Water Board, 506 Dolorosa Street, San Antonio, Texas: and sufficient to notify City if mailed by certified mail to City Manager, City of Terrell Hills, 5100 N. New Braunfels, San Antonio, Texas 78209.

(Ord. 254, 8-11-69)

*(amended by Amendment to and Renewal of Ordinance Agreement 5-10-99.)

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Sec. 4-20, Manhole Rehabilitation

AUTHORITY FOR CITY OF SAN ANTONIO TO ENTER AND CONDUCT MANHOLE REHABILITATION AS A PART OF THE SAN ANTONIO WASTEWATER FACILITIES IMPROVEMENTS PROGRAM

WHEREAS, the Congress of the United States enacted the Federal Water Pollution Control Act (P. L. 92-500) and as subsequently Amended, with the objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's water;" and

WHEREAS, the City of Terrell Hills has previously resolved to carry out designated management agency responsibilities as identified in the San Antonio 208 Areawide Waste Treatment Management

Plan; and

WHEREAS, the San Antonio 201 Wastewater Facilities Plan has been developed in accordance with state and federal guidelines and the San Antonio 208 Areawide Waste Treatment Management Plan; and

WHEREAS, the City of Terrell Hills wishes to comply with certain state and federal regulations to insure eligibility for federal grants for construction of Wastewater Treatment works within the designated San Antonio 201 Wastewater Facilities Planning Area; and

WHEREAS, the City of San Antonio is prepared to award construction contracts for manhole rehabilitation throughout the 201 Wastewater Facilities Planning Area, partially funded by grants from the U. S. Environmental Protection Agency; and

WHEREAS, the City of San Antonio estimates the total cost of manhole rehabilitation in the City of Terrell Hills to be \$43,257.81; and

WHEREAS, seventy-five percent (75%) of the total cost will be funded by a grant from the Federal government and twenty-five percent (25%) funded by the City of Terrell Hills; and

WHEREAS, the City of San Antonio will contract with and pay the construction contract and be reimbursed for the local share through sewer use fees under the sewer service contract,

The City Council of the City of Terrell Hills has authorized the City of San Antonio, its agents and construction contractor to perform manhole rehabilitation within its jurisdiction.

It is understood that the City of San Antonio or its agents will notify residents, as appropriate, of the work to be performed prior to the performance of the work.

It is further understood that the construction contractor and agents for the City of San Antonio will be identified to the City of Terrell Hills prior to commencement of work, and that those persons named will comply with security, traffic or other specified regulations of the City of Terrell Hills. (Ord. 790, 5-8-89)

*Amended by Ord. 976, 7-14-97

* * * * *

Sec. 4-25, Mutual Aid Law Enforcement Agreement

This agreement is entered into the 28th day of April, 2003, by and between the Cities of Alamo Heights, Terrell Hills and Olmos Park, (hereinafter referred to as the "Member Cities").

Whereas, both Section 791.001 et seq. of the Texas Government Code and Chapter 362 of the Texas Local Government Code authorize municipalities to enter into interlocal agreements as here made, and it is the desire of the Member Cities to enter into such an agreement.

Now, therefore, it is agreed as follows:

1. The Cities of Alamo Heights, Terrell Hills and Olmos Park hereby agree to enter into an interlocal cooperation agreement for governmental purposes.

2. Any on-duty law enforcement officer employed by a Member City may be assigned or dispatched, by a request, to a Member City outside of the city of his/her employment, but within the area covered by a Member City as set forth in this agreement.

3. A police officer employed by a Member City may be assigned or dispatched to another Member City only when requested by an authorized police officer employed by the requesting city or the dispatcher.

4. Each law enforcement officer on an assignment hereunder shall have all law enforcement powers of a peace officer of the Member City to which he is requested or assigned.

5. In consideration of, and in further recognition of the benefits gained by the Member Cities, a law enforcement officer who is dispatched to a Member City other than the city in which he/she is employed shall receive the same wage, salary and all other compensation, including death and worker's compensation benefits, the same as though the service has been rendered within the limits of the Member City by which the officer is employed. It is agreed that all wages and disability benefits, damage to equipment and clothing, and medical expenses shall be paid by the Member City in which the officer is employed.

6. No Member City shall request from any other Member City any reimbursement for services performed pursuant to this agreement.

7. If any law enforcement officer assigned to a Member City is cited as a defendant party to any civil lawsuit arising out of, directly or indirectly, the officer's acts while functioning as a law enforcement officer in a Member City, outside of the city by which he/she is employed, said officer shall be entitled to the same benefits that such officer would receive had such civil action arisen out of an official act within the scope and terms of his/her employment and duties in the jurisdiction of the agency by which he is employed. No Member City shall be responsible for the civil acts of a law enforcement officer of another city except as may be decreed by a judgment of a court of jurisdiction.

8. Any peace officer assigned to a requesting Member City pursuant to this agreement shall be under the command of the law enforcement officer who is in charge in that city while so assigned, provided that no officer shall perform any duty not within the guidelines of his/her department's

policies/directives.

9. For the purpose of determining responses from Member Cities, Alamo Heights will be divided into two sections, one section being west of Broadway and the other section being east of Broadway. Olmos Park will respond to all properties that address on Broadway and all addresses located west of Broadway. Terrell Hills will respond to all properties that address on Broadway and all addresses located east of Broadway. Alamo Heights will respond to all properties located in the Member Cities. Should assistance not be available from the first requested Member City, the next available Member City shall respond. The non-assisting Member City will stand by and be available to handle additional calls that may be dispatched in the Member City if requested. In the event of an extreme emergency, the requesting Member City may request assistance from all Member Cities.

10. Each Member City shall provide any resources, if available, to the other Member Cities when requested.

This agreement shall be effective as to each of the Member Cities as of the date which it is executed by the duly authorized official of the city and shall remain in effect for one (1) year from the last date of execution noted hereinafter. This agreement shall automatically renew for successive one (1) year terms unless rescinded by resolution, ordinance or other order of a Member City and notice of such action is transmitted in writing to the other parties to this agreement.

In witness whereof, the undersigned cities have executed this agreement on the date specified.

/s/J. Bradford Camp, Mayor of City of Terrell Hills, Date signed 4/14/2003

/s/Robert Biechlin, Mayor of City of Alamo Heights, Date signed 4/28/2003

/s/Gerald Dubinski, Mayor of City of Olmos Park, Date signed 4/16/2003