ORDINANCE NO. 1900

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

WHEREAS, COR DEVELOPMENT, LLC, a Kansas Limited Liability Company, (hereinafter "COR DEVELOPMENT") is the owner of the tract of ground that is described in the attached Exhibit 'A,' said Exhibit 'A' being incorporated herein by reference; and

WHEREAS, the property described in Exhibit A adjoins the City of Leawood but is presently located in an unincorporated portion of Johnson County; and

WHEREAS, COR Development and the City of Leawood have both approved and executed an Annexation Agreement; and

WHEREAS, COR Development has filed a "Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions"; and

WHEREAS, the Governing Body of the City of Leawood has, after giving the matter due consideration, determined that it is in the best interests of the City to accept the Petition; and

WHEREAS, it is the intent of the City, with the consent of the owner, to annex said property into the City of Leawood in the manner authorized by K.S.A. 12-520(a)(7) with said annexation to be effective as provided by law.

NOW THEREFORE, be it ordained by the Governing Body of the City of Leawood:

Section 1. **Property Annexed.** The City of Leawood does hereby annex pursuant to the provisions of K.S.A. § 12-520(a)(7) the property described in Exhibit 'A,' attached hereto and incorporated herein by reference.

Section 2. **Notice of Annexation.** The City Clerk is directed to furnish a certified copy of this ordinance to the Johnson County Clerk, the Register of Deeds of Johnson County, and the Johnson County Election Commissioner.

Section 3. **Effective Date.** This ordinance shall take effect and be in force from and after its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it shall take effect in accordance with the provisions of said statute.

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

P:\4CSTONE.DOC
LT1-01-001

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\4CSTONE.DOC
LT1-01-001

PEI 010003
CORNERSTONE VILLAGE
LEGAL FOR ANNEXATION

DESCRIPTION:

Part of the Northwest Quarter of Section 33, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 33; thence N 87°51'30" E, along the North line of the Northwest Quarter of said Section 33, a distance of 1173.45 feet; thence S 1°50'17" E, a distance of 824.10 feet; thence N 87°51'30" E, a distance of 370.00 feet to a point on the West line of the East 68 acres of the Northwest Quarter of said Section 33; thence S 1°50'17" E, along the West line of the East 68 acres of the Northwest Quarter of said Section 33, a distance of 238.27 feet to a point on the North right-of-way line of 137th Street as platted in the Church of the Resurrection Second Plat; thence S 72°11'24" W, along the North line of said Church of the Resurrection Second Plat a distance of 28.62 feet to a point of curvature; thence Southwesterly on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 650.00 feet, a central angle of 34°26'53" an arc length of 390.80 feet to a point of reverse curvature; thence Westerly, on a curve to the right, along the North line of said Church of the Resurrection Second Plat, with a radius of 600.00 feet, a central angle of 81°18'37", an arc length of 851.48 feet to a point of reverse curvature; thence Northwesterly, on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 675.00 feet, a central angle of 31°08'13", an arc length of 366.82 feet; thence S 87°54'55" W, along the North line of said Church of the Resurrection Second Plat, a distance of 68.22 feet to the West line of the Northwest Quarter of said Section 33; thence N 2°05'05" W, along the West line of the Northwest Quarter of said Section 33, a distance of 1309.98 feet to the TRUE POINT OF BEGINNING and containing 40.6287 acres, more or less.

EXHIBIT
A

ORDINANCE NO. 1900

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

WHEREAS, COR DEVELOPMENT, LLC, a Kansas Limited Liability Company, (hereinafter "COR DEVELOPMENT") is the owner of the tract of ground that is described in the attached Exhibit 'A,' said Exhibit 'A' being incorporated herein by reference; and

WHEREAS, the property described in Exhibit A adjoins the City of Leawood but is presently located in an unincorporated portion of Johnson County; and

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WHEREAS, COR Development has filed a "Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions"; and

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Section 3. **Effective Date.** *This ordinance shall take effect and be in force from and after* its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it shall take effect in accordance with the provisions of said statute.

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

STATE OF KANSAS } SS
COUNTY OF JOHNSON }
FILED FOR RECORD
2001 AUG -8 A 9:53
REBECCA L. DAVIS
REGISTER OF DEEDS

P:\4CSTONE.DOC
LT1-01-001

NIC

cnw- City of Leawood

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the above and foregoing with attached Exhibit A is a true and correct copy of Ordinance No. 1900 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 25th day of July, 2001.

(S E A L)

Martha Heizer, City Clerk

BOOK 7212 PAGE 156

P:\4CSTONE.DOC
LT1-01-001

PEI 010003
CORNERSTONE VILLAGE
LEGAL FOR ANNEXATION

DESCRIPTION:

Part of the Northwest Quarter of Section 33, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 33; thence N 87°51'30" E, along the North line of the Northwest Quarter of said Section 33, a distance of 1173.45 feet; thence S 1°50'17" E, a distance of 824.10 feet; thence N 87°51'30" E, a distance of 370.00 feet to a point on the West line of the East 68 acres of the Northwest Quarter of said Section 33; thence S 1°50'17" E, along the West line of the East 68 acres of the Northwest Quarter of said Section 33, a distance of 238.27 feet to a point on the North right-of-way line of 137th Street as platted in the Church of the Resurrection Second Plat; thence S 72°11'24" W, along the North line of said Church of the Resurrection Second Plat a distance of 28.62 feet to a point of curvature; thence Southwesterly on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 650.00 feet, a central angle of 34°26'53" an arc length of 390.80 feet to a point of reverse curvature; thence Westerly, on a curve to the right, along the North line of said Church of the Resurrection Second Plat, with a radius of 600.00 feet, a central angle of 81°18'37", an arc length of 851.48 feet to a point of reverse curvature; thence Northwesterly, on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 675.00 feet, a central angle of 31°08'13", an arc length of 366.82 feet; thence S 87°54'55" W, along the North line of said Church of the Resurrection Second Plat, a distance of 68.22 feet to the West line of the Northwest Quarter of said Section 33; thence N 2°05'05" W, along the West line of the Northwest Quarter of said Section 33, a distance of 1309.98 feet to the TRUE POINT OF BEGINNING and containing 40.6287 acres, more or less.

EXHIBIT
A

ORD1900

Publication Fees: $48.04

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1900--7/17/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JULY 18, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$48.04

ORDINANCE NO. 1900

First published in The Legal Record, Tuesday, July 17, 2001.

ORDINANCE NO. 1900

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

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WHEREAS, COR Development has filed a "Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions"; and

WHEREAS, the Governing Body of the City of Leawood has, after giving the matter due consideration, determined that it is in the best interests of the City to accept the Petition; and

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NOW THEREFORE, be it ordained by the Governing Body of the City of Leawood:

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Section 3. **Effective Date.** This ordinance shall take effect and be in force from and after its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it *shall take effect in accordance with the provisions of said statute.*

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

PEI 010003
CORNERSTONE VILLAGE
LEGAL FOR ANNEXATION

DESCRIPTION:

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EXHIBIT A

ORDINANCE NO. 1899 C

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, SECTION 5 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO DISTURBING THE PEACE.

WHEREAS, noise has been proven to have demonstrable adverse physiological, biochemical and psychological impacts on humans; and

WHEREAS, the noxious stimulus of noise has long been used as a laboratory model for producing stress; and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and

WHEREAS, every citizen has the right to the peaceable enjoyment of their private property, and the usability of their commercial and industrial property; and

WHEREAS, the City of Leawood, Kansas, desires to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 11, Article 2, Section 5, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

11-205 DISTURBING THE PEACE

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, unreasonable or unusually loud noise or any noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City of Leawood, when such noise would disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person.

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living within or occupying residential

districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area, when such sound would disturb the peace, quiet or repose of a reasonable person. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) Exemptions. Sounds emanating from the following shall be exempt from the provisions of (a) through (c) above:

(1) Emergency vehicles;
(2) Public safety vehicles;
(3) Emergency activities of the fire or police department;
(4) Emergency activities of any utility company;
(5) Municipal maintenance vehicles and equipment;
(6) Parades, fun run, race, festival, fiesta, concert, or other public gathering, within city limits, which are sponsored or permitted by the City;
(7) Any noise or sound from church bells, or similar chimes, when used as part of a religious observance or service and which does not exceed five [5] continuous minutes in duration;

(8) Any noise or sound from lawful school activity;

(9) Any noise or sound from lawful fireworks displays.

(e) Statement of Intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Ord. 1691C; 8/18/97)

SECTION TWO: Repeal of Existing Sections. The existing Code § 11-205 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 16th day of July, 2001.

APPROVED by the Mayor this 16th day of July, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\411-205A.DOC
CD8-00-001

ORD1899C

Publication Fees: $52.66

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1899C--7/17/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 18, 2001

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$52.66

ORDINANCE NO. 1899C

First published in The Legal Record, Tuesday, July 17, 2001.

ORDINANCE NO. 1899C

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, SECTION 5 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO DISTURBING THE PEACE.

WHEREAS, noise has been proven to have demonstrable adverse physiological, biochemical and psychological impacts on humans; and

WHEREAS, the noxious stimulus of noise has long been used as a laboratory model for producing stress; and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and

WHEREAS, every citizen has the right to the peaceable enjoyment of their private property, and the usability of their commercial and industrial property; and

WHEREAS, the City of Leawood, Kansas, desires to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

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(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living within or occupying residential districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area, when such sound would disturb the peace, quiet or repose of a reasonable person. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) Exemptions. Sounds emanating from the following shall be exempt from the provisions of (a) through (c) above:

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(2) Public safety vehicles;
(3) Emergency activities of the fire or police department;
(4) Emergency activities of any utility company;
(5) Municipal maintenance vehicles and equipment;
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(7) Any noise or sound from church bells, or similar chimes, when used as part of a religious observance or service and which does not exceed five [5] continuous minutes in duration;
(8) Any noise or sound from lawful school activity;
(9) Any noise or sound from lawful fireworks displays.

(e) Statement of Intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Ord. 1691C; 8/18/97)

SECTION TWO: Repeal of Existing Sections. The existing Code § 11-205 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 16th day of July, 2001.

APPROVED by the Mayor this 16th day of July, 2001.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1898

AN ORDINANCE GRANTING TO EVEREST MIDWEST LICENSEE LLC, A TELECOMMUNICATIONS FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOD, KANSAS.

WHEREAS, the City of Leawood, Kansas ['City'], a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant a franchise to construct, operate and maintain telecommunications facilities in said City; and

WHEREAS, Everest Midwest Licensee LLC, ['Everest'] desires to operate telecommunication facilities for the purposes of providing telecommunication services in the City and its surrounding communities, and therefore has applied to the City for a franchise in order to operate its facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance to K.S.A. § 12-2001, et seq.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

1. **Definitions.** For the purpose of this franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

'Cable' includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.

'Cable Service' means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for selection and use of video programming or other programming service, as defined by 47 USC §522(6), any successor statute of similar import.

'City' means the City of Leawood, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leawood as now constituted or as shall hereafter exist.

'Facilities' means lines, pipes, wires, cables, conduits, ducts, culverts, hoses, irrigation systems, manholes, poles, towers, vaults, pedestals, boxes, appliances, antennas, repeaters, micro cells, Pico cells, amplifiers, transmitters, gates, meters, appurtenances, or other equipment used by the franchisee for the purposes of conducting franchise operations and providing service to subscribers.

'Franchise Ordinance' means this ordinance passed to grant the telecommunications franchise to franchisee. This ordinance shall operate as an agreement or contract between the City and franchisee and shall be subject to the laws of the State of Kansas.

'Franchisee' means Everest Midwest Licensee LLC, or its successors, transferees, or assigns.

'Franchise Fee' means the fee imposed by the City on franchisee solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisee; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fee imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

'Gross Revenues' means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access line services for pay phone lines provided by franchisee to all pay phone service providers; [3] local directory assistance revenue; [4] line status verification/busy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, nonregulated services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from 'gross revenues.' Further, 'gross revenues' shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within 'gross revenues.' If during the term of this franchise ordinance franchisee offers additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of 'gross revenues,' such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

'Open Video System' means the provision of video programming service as described in and subject to 47 USC § 573, or a successor statute of similar import.

'Person' means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

'Right-of-Way' means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

'Service' means a commodity used by the public and provided through franchisee's facilities.

'Subscriber' means any person who receives services from franchisee services.

'Telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

'Telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

'Utility Easement' means, for the purpose of this ordinance, an easement dedicated to the City for the purpose of utilities.

2. **Grant.** Franchisee is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee's right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance.

   This franchise does not provide franchisee the right to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City. Upon franchisee's request for a franchise to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 573.

3. **Use of Public Right-of-Way and Utility Easements.** Franchisee's facilities shall be located in the right-of-way and utility easements as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Nothing in this agreement shall authorize Franchisee to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee's facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchisee shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, franchisee shall be subject to all right-of–way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

4. **Franchise Fee.** Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per lineal foot for all fiber in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local service to customers within the City, franchisee shall notify the City Clerk. At such time, the franchise fee shall be the greater of the above prescribed amount, or five [5%] percent of its gross revenues as defined herein. Payment on the basis of gross revenues shall be made on a monthly basis without invoice or reminder from the City, and paid within forty-five [45] days after the last day of the applicable month.

All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Franchisee shall pay interest at an annual rate of ten [10%] percent for each month or fraction thereof on any late payment of the charge provided for in this franchise ordinance.

5. **City's Right to Audit and Access to Records.** If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report regarding all applicable monthly revenues and all relevant codes. Franchisee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-218, as amended. In the event the City is required by to disclose such information, the City shall provide franchisee seven [7] days advance notice of its intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten [10%] percent.

   Regardless of whether franchisee is providing service within the City, the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by franchisee. In addition to access to the records of franchisee for audits, upon request, franchisee shall provide reasonable access to records necessary to verify compliance with the terms of this franchise ordinance.

6. **Term.** This franchisee ordinance shall be effective for a term of one [1] year from the effective date.

7. **Renegotiation of Franchise.** If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond those telecommunications services contemplated by this ordnance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation under such circumstances, franchisee agrees to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a separate franchise agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.

8. **Description of Service.** Franchisee shall on a semi-annual basis provide the City with a description of new local telecommunications services offered within the City during the prior six-month period. In the event franchisee offers new services [other than telecommunications services, extended area service, unbundled network elements, nonregulated services, carrier and end user access and long distance], franchisee shall notify the City of such services on a semi-annual basis.

9. **Franchisee Information.** Franchisee shall, at its own expense, annually submit to the City the following information:

   a. A report of the franchisee's gross revenues as referenced by Section 5 herein [only if franchisee is providing service within the City]; and

   b. A summary of the previous year's development of franchise facilities, including but not limited to, the location of facilities during the year, and franchisee's plan of development of facilities for the next year – Note: in lieu of this requirement, franchisee's right-of-way director may meet in person with the City's Public Works Director to discuss these issues; and

   c. Information as to the number of subscribers in the City of Leawood [only if franchisee is providing service within the City]. Note: this requirement does not include giving the identification of the subscribers.

10. **Subscriber Rates.** Franchisee's charges to subscribers will comply with all applicable federal and state regulations. Upon request, franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. When provided so by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

11. **Use of Facilities by Other Service Providers.** On a semi-annual basis, franchisee shall notify the City of the identity of local service providers that have been granted a certificate of convenience to offer local telecommunications services within the State of Kansas. Franchisee shall also provide the City on a semi-annual basis of the identity of entities with which franchisee has entered into an interconnection and/or resale agreement within the State of Kansas.

12. **Transfer of Franchise.** Pursuant to the written permission of the City, which shall not be unreasonably withheld, franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations in accordance with this franchise ordinance or any other appropriate governmental requirement. If franchisee should seek approval to assign this franchise, franchisee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only

in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the rights granted herein by the City or franchisee's facilities not conforming with the requirements of this section shall be null and void.

13. **Other Service Providers.** Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use its existing poles and to relocate its facilities underground, all other service providers using the same poles, including franchisee when applicable, shall also relocate their facilities underground at that time; provided, however, that such placement is economically reasonable. The City shall not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement shall be timely provided to franchisee.

14. **Notification Procedure.** Any required or permitted notice under this franchise ordinance shall be in writing. Notice upon the City shall be delivered to the City Clerk by first class United States Mail or by personal delivery. Notice upon franchisee shall be delivered by first class United States Mail or by personal delivery to:

Everest Midwest Licensee LLC
5555 Winghaven Boulevard
O'Fallon, MO 63366

15. **Indemnification.** Upon notice by the City, franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by franchisee's actions and operations of its telecommunications service in accordance to this ordinance. The City agrees to immediately notify franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to franchisee. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

16. **Liability Insurance Requirement.** Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than One Million Dollars [$1,000,000] per occurrence and Two Million Dollars [$2,000,000] in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by the service provider, or alleged to so have been caused or occurred. If franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

17. **Performance and Maintenance Bond Requirements.** Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this franchise ordinance plus one additional year, conditioned upon franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

18. **Reservation of Rights.** In addition to any rights specifically reserved to the City by this franchise ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this franchise ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or state law, if the City determines: [a] that it is in the public interest to do so; and [b] that the enforcement of such provision will impose an undue hardship on franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this franchise ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

19. **Forfeiture of Franchise.** In case of the failure of franchisee to comply with any of the provisions of this franchise ordinance, or if franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this franchise ordinance, franchisee shall forfeit all rights and privileges granted by this franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

    a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this franchise ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen [14] days subsequent to receipt of such notice to inform the City in writing of the action franchisee shall take to correct the violation. Such corrective action shall be completed within thirty [30] days subsequent to receipt of notice unless otherwise agreed to by the City. If, at the end of such period, the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action

against franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of the franchise ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety [90] days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated.

c. If within thirty [30] days after the effective date of an ordinance to terminate the franchise, in accordance with 19(a) or 19(b) herein, the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchisee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty [30] day period the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this franchise ordinance and/or to abate nuisances maintained in violation thereof.

20. **Revocation of Franchise.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the franchisee as a result of and in response to any of the following events or reasons:

a. Any provision of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise ordinance as to cause the same to become null and void; or

b. Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or upon being granted franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty [30] days after the effective date of such ordinance to terminate the franchise the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If, within such thirty [30] day period, the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the Court finds that the franchise is subject to cancellation by the reason addressed by this section, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

21. **Miscellaneous Provisions.**

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain franchisee's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchise shall in any way affect the rights or obligations of franchisee.

b. Exclusive Benefit of Franchise Right by Franchisee. The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

c. Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the franchise ordinance granted. Second, franchisee expressly acknowledges that it accepted the franchise ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise conferred upon franchisee. Third, franchisee acknowledges by its acceptance of this franchise ordinance that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this franchise ordinance not expressed herein. Finally, franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this franchise

ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchise facilities by franchisee or its agent shall be in accordance with all laws and regulations of the United States, the State, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, franchisee's failure to comply with any law or regulation governing the operation of said franchise facilities may result in a forfeiture of the franchise in accordance with the provisions of this franchise ordinance.

e. Attachment to Poles. Nothing in this franchise ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments.

f. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

g. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond franchisee's or the City's control.

h. Severability. Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22. **Repeal of Other Ordinances.** All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statute have occurred.

23. **Effectiveness.** This franchise ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three [3] regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty [60] days from the date of final passage by the Governing Body and after publication in the official City newspaper for two [2] consecutive weeks following final passage, unless a proper protest is filed, or franchisee fails to provide written acceptance within the sixty [60] day period.

First Reading:	June 18, 2001	**Second Reading**:	July 2, 2001
Third Reading:	July 16, 2001	**Effective Date**:	September 15, 2001

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

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LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 2 consecutive week(s), as follows:

ORDINANCE NO. 1898--7/24/01 & 7/31/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

AUGUST 1, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$373.86

ORDINANCE NO. 1898

First published in The Legal Record, Tuesday, July 24, 2001.

ORDINANCE NO. 1898

AN ORDINANCE GRANTING TO EVEREST MIDWEST LICENSEE LLC, A TELECOMMUNICATIONS FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOD, KANSAS.

WHEREAS, the City of Leawood, Kansas ['City'], a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant a franchise to construct, operate and maintain telecommunications facilities in said City; and

WHEREAS, Everest Midwest Licensee LLC, ['Everest'] desires to operate telecommunication facilities for the purposes of providing telecommunication services in the City and its surrounding communities, and therefore has applied to the City for a franchise in order to operate its facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance to K.S.A. § 12-2001, et seq.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

1. **Definitions.** For the purpose of this franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

'Cable' includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.

'Cable Service' means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for selection and use of video programming or other programming service, as defined by 47 USC §522(6), any successor statute of similar import.

'City' means the City of Leawood, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leawood as now constituted or as shall hereafter exist.

'Facilities' means lines, pipes, wires, cables, conduits, ducts, culverts, hoses, irrigation systems, manholes, poles, towers, vaults, pedestals, boxes, appliances, antennas, repeaters, micro cells, Pico cells, amplifiers, transmitters, gates, meters, appurtenances, or other equipment used by the franchisee for the purposes of conducting franchise operations and providing service to subscribers.

'Franchise Ordinance' means this ordinance passed to grant the telecommunications franchise to franchisee. This ordinance shall operate as an agreement or contract between the City and franchisee and shall be subject to the laws of the State of Kansas.

'Franchisee' means Everest Midwest Licensee LLC, or its successors, transferees, or assigns.

'Franchise Fee' means the fee imposed by the City on franchisee solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisee; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fee imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

'Gross Revenues' means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access line services for pay phone lines provided by franchisee to all pay phone service providers; [3] local directory assistance revenue; [4] line status verification/busy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, nonregulated services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from 'gross revenues.' Further, 'gross revenues' shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within 'gross revenues.' If during the term of this franchise ordinance franchisee offers additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of 'gross revenues,' such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

'Open Video System' means the provision of video programming service as described in and subject to 47 USC § 573, or a successor statute of similar import.

'Person' means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

'Right-of-Way' means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

'Service' means a commodity used by the public and provided through franchisee's facilities.

'Subscriber' means any person who receives services from franchisee services.

'Telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

'Telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

'Utility Easement' means, for the purpose of this ordinance, an easement dedicated to the City for the purpose of utilities.

2. **Grant.** Franchisee is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee's right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance.

This franchise does not provide franchisee the right to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City. Upon franchisee's request for a franchise to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 573.

3. **Use of Public Right-of-Way and Utility Easements.** Franchisee's facilities shall be located in the right-of-way and utility easements as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Nothing in this agreement shall authorize Franchisee to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee's facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchisee shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, franchisee shall be subject to all right-of-way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

4. **Franchise Fee.** Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per lineal foot for all fiber in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local service to customers within the City, franchisee shall notify the City Clerk. At such time, the franchise fee shall be the greater of the above prescribed amount, or five [5%] percent of its gross revenues as defined herein. Payment on the basis of gross revenues shall be made on a monthly basis without invoice or reminder from the City, and paid within forty-five [45] days after the last day of the applicable month.

All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Franchisee shall pay interest at an annual rate of ten [10%] percent for each month or fraction thereof on any late payment of the charge provided for in this franchise ordinance.

5. **City's Right to Audit and Access to Records.** If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report regarding all applicable monthly revenues and all relevant codes. Franchisee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-218, as amended. In the event the City is required by to disclose such information, the City shall provide franchisee seven [7] days advance notice of its intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten [10%] percent.

Regardless of whether franchisee is providing service within the City, the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by franchisee. In addition to access to the records of franchisee for audits, upon request, franchisee shall provide reasonable access to records necessary to verify compliance with the terms of this franchise ordinance.

6. **Term.** This franchisee ordinance shall be effective for a term of one [1] year from the effective date.

7. **Renegotiation of Franchise.** If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond those telecommunications services contemplated by this ordinance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation under such circumstances, franchisee agrees to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a separate franchise agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.

CONTINUED ON NEXT PAGE

To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty [30] days after the effective date of such ordinance to terminate the franchise the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If, within such thirty [30] day period, the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the Court finds that the franchise is subject to cancellation by the reason addressed by this section, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

Miscellaneous Provisions.

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain franchisee's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchise shall in any way affect the rights or obligations of franchisee.

b. Exclusive Benefit of Franchise Right by Franchisee. The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

c. Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the franchise ordinance granted. Second, franchisee expressly acknowledges that it accepted the franchise ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise conferred upon franchisee. Third, franchisee acknowledges by its acceptance of this franchise ordinance that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this franchise ordinance not expressed herein. Finally, franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this franchise ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchise facilities by franchisee or its agent shall be in accordance with all laws and regulations of the United States, the State, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, franchisee's failure to comply with any law or regulation governing the operation of said franchise facilities may result in a forfeiture of the franchise in accordance with the provisions of this franchise ordinance.

e. Attachment to Poles. Nothing in this franchise ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments.

f. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

g. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond franchisee's or the City's control.

h. Severability. Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22. **Repeal of Other Ordinances.** All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statute have occurred.

23. **Effective Date.** Before the final passage of this ordinance, it shall be published in the official City newspaper three [3] regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty [60] days from the date of final passage by the Governing Body and after publication in the official City newspaper for two [2] consecutive weeks following final passage, unless a proper protest is filed, or franchisee fails to provide written acceptance within the sixty [60] day period.

laws of the State of Kansas.

First Reading: June 18, 2001 **Second Reading:** July 2, 2001

Third Reading: July 16, 2001 **Effective Date:** September 15, 2001

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

ORDINANCE NO. 1897C

AN ORDINANCE AMENDING THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, REPEALING EXISTING CHAPTER XV, ARTICLE I, PERTAINING TO THE LEAWOOD SANITARY SEWER SYSTEM.

WHEREAS, the City of Leawood, Kansas, desires to repeal current Chapter XV, Article I, related to the Leawood Sanitary Sewer System.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Repeal. That the existing Chapter XV, Article I, pertaining to the Leawood Sanitary Sewer System is hereby repealed. [Prior Law: Ord. 1137C; 11/20/1989: Ord. 753: Ord. 501; Code 1984: Code 1973].

SECTION TWO: Effective Date. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 2nd day of July, 2001.

APPROVED by the Mayor this 2nd day of July, 2001.

Peggy Dunn

Peggy Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\415-101.DOC

ORD1897C

Publication Fees: $18.32

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1897C--7/3/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JULY 5, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$18.32

ORDINANCE NO. 1897C

First published in The Legal Record, Tuesday, July 3, 2001.

ORDINANCE NO. 1897 C

AN ORDINANCE AMENDING THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, REPEALING EXISTING CHAPTER XV, ARTICLE I, PERTAINING TO THE LEAWOOD SANITARY SEWER SYSTEM.

WHEREAS, the City of Leawood, Kansas, desires to repeal current Chapter XV, Article I, related to the Leawood Sanitary Sewer System.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Repeal. That the existing Chapter XV, Article I, pertaining to the Leawood Sanitary Sewer System is hereby repealed. [Prior Law: Ord. 1137C; 11/20/1989: Ord. 753: Ord. 501; Code 1984: Code 1973].

SECTION TWO: Effective Date. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 2nd day of July, 2001.

APPROVED by the Mayor this 2nd day of July, 2001.

Peggy Dunn

Peggy Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1896 C

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 1, OF THE CODE OF THE CITY OF LEAWOOD, 2000, BY ADDING NEW SECTION 14-108, PERTAINING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES, SPECIFICALLY SECTION 30 OF THE 2000 STANDARD TRAFFIC ORDINANCE, INCORPORATED BY REFERENCE UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012, AND K.S.A. 12-3301 AND 12-3302, BY ADOPTION OF ORDINANCE NO. 1871, AND REPEALING EXISTING SECTION 30 OF THE 2000 STANDARD TRAFFIC ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 14, Article 1, of the Code of the City of Leawood, Kansas, 2000, is hereby added to read as follows:

14-108 SAME; AMENDMENT. Section 30 [Article 6] of the Standard Traffic Ordinance incorporated in Section 14-101 of this Article shall be amended to read as follows:

Section 30. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.

[a] No person shall operate or attempt to operate any vehicle within this city while:

[1] The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;

[2] The alcohol concentration in the person's blood or breath, as measured within two [2] hours of the time of operating or attempting to operate a vehicle, is .08 or more;

[3] Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

[4] Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

[5] Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

[b] No person shall operate or attempt to operate any vehicle within this city if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

[c] If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

[d] Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $500 nor more than $1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. § 8-1008, and amendments thereto, or both the education and treatment programs.

[e] On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $1,500. The person convicted must serve at least five [5] consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. § 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. § 8-1008, and amendments thereto.

[f] Any person convicted of violating this section who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

[g] The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

[h] In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court

shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

[i] The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

[j] For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

[1] **'Conviction'** includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

[2] **'Conviction'** includes being convicted of a violation of a law of any state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

[3] Any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first or second offender.

[4] It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

[5] A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.

[k] Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. § 8-1014, and amendments thereto.

[l] Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

[m] No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. § 12-4413 et seq., and amendments thereto, shall not constitute plea bargaining.

[n] The alternatives set out in subsections [a][1], [a][2] and [a][3] may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

[Code 2000]

SECTION TWO: That this ordinance shall be construed as follows:

INTERPRETATION

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION THREE: That Section 30 of the 2000 Standard Traffic Ordinance [STO] is hereby repealed.

SECTION FOUR: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: This ordinance shall become effective July 1, 2001.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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ORD1896C

Publication Fees: $69.83

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1896C--6/19/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JUNE 20, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$69.83

ORDINANCE NO. 1896 C

First published in The Legal Record, Tuesday, June 19, 2001.

ORDINANCE NO. 1896 C

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 1, OF THE CODE OF THE CITY OF LEAWOOD, 2000, BY ADDING NEW SECTION 14-108, PERTAINING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES, SPECIFICALLY SECTION 30 OF THE 2000 STANDARD TRAFFIC ORDINANCE, INCORPORATED BY REFERENCE UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012, AND K.S.A. 12-3301 AND 12-3302, BY ADOPTION OF ORDINANCE NO. 1871, AND REPEALING EXISTING SECTION 30 OF THE 2000 STANDARD TRAFFIC ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 14, Article 1, of the Code of the City of Leawood, Kansas, 2000, is hereby added to read as follows:

14-108 **SAME; AMENDMENT. Section 30 [Article 6] of the Standard Traffic Ordinance incorporated in Section 14-101 of this Article shall be amended to read as follows:**

Section 30. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.

[a] No person shall operate or attempt to operate any vehicle within this city while:

[1] The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;

[2] The alcohol concentration in the person's blood or breath, as measured within two [2] hours of the time of operating or attempting to operate a vehicle, is .08 or more;

[3] Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

[4] Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

[5] Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

[b] No person shall operate or attempt to operate any vehicle within this city if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

[c] If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

[d] Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $500 nor more than $1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. § 8-1008, and amendments thereto, or both the education and treatment programs.

[e] On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $1,500. The person convicted must serve at least five [5] consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. § 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. § 8-1008, and amendments thereto.

[f] Any person convicted of violating this section who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

[g] The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

[h] In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

[i] The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

[j] For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

[1] **'Conviction'** includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

[2] **'Conviction'** includes being convicted of a violation of a law of any state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

[3] Any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first or second offender.

[4] It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

[5] A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.

[k] Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. § 8-1014, and amendments thereto.

[l] Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

[m] No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. § 12-4413 et seq., and amendments thereto, shall not constitute plea bargaining.

[n] The alternatives set out in subsections [a][1], [a][2] and [a][3] may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

[Code 2000]

SECTION TWO: That this ordinance shall be construed as follows:

INTERPRETATION

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION THREE: That Section 30 of the 2000 Standard Traffic Ordinance [STO] is hereby repealed.

SECTION FOUR: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: This ordinance shall become effective July 1, 2001.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1895C

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE 4, OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO SOLID WASTE MANAGEMENT, AND REPEALING EXISTING ARTICLE 4.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY'S SOLID WASTE MANAGEMENT PLAN. This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) ***Agricultural Waste***. Solid waste resulting from the production of farm or agricultural products.

(2) ***Approved Container***. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 55 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection. The weight of any individual container and its contents shall not exceed 75 pounds.

(3) ***Bulky Waste***. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) ***City***. The City of Leawood, Kansas.

(5) ***Collection***. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) ***Collector***. Any person, public or private, engaged in collecting solid waste and recyclable materials.

(7) ***Combined Refuse Collection***. The collection of mixed refuse (putrescible and nonputrescible).

(8) ***Combined Solid Waste***. Solid waste containing both garbage and rubbish.

(9) ***Commercial Waste***. Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) ***Composting***. A controlled process of microbial degradation of organic material into a stable, nuisance free humas-like product.

(11) ***Construction Waste***. Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) ***Contractor***. The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) ***Demolition Waste***. Waste material from the destruction of residential, industrial or commercial structures.

(14) ***Disposable Solid Waste Container***. Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) ***Disposal***. Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) ***Dump***. A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) ***Dwelling Unit***. Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) ***Garbage***. The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) ***Hazardous Waste***. Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) ***Incineration***. The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.

(21) ***Nuisance***. Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) ***Occupant***. Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) ***Owner***. Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) ***Person***. Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) ***Processing of Waste***. Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) ***Putrescible Waste***. The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) ***Recyclable Container***. Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) ***Recyclable Material***. Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) ***Refuse***. (See Solid Waste).

(30) ***Rubbish***. Nonputrescible solid wastes consisting of combustible and/or noncombustible waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) ***Bulky rubbish*** - (See Bulky Waste).

(b) ***Commercial rubbish*** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.

(c) ***Residential rubbish*** - rubbish resulting from the maintenance and operation of dwelling units.

(31) ***Scavenger***. A person who scavenges. Scavenge means to collect and remove refuse from.

(32) ***Service.*** The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) ***Solid Waste.*** Unwanted or discarded waste materials in a solid or semi-liquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) ***Commercial solid waste*** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) ***Residential solid waste*** - solid waste resulting from the maintenance and operation of dwelling units.

(34) ***Solid Waste Container.*** Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) ***Solid Waste Disposal Area.*** Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) ***Solid Waste Processing Facility.*** Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) ***Storage.*** Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) ***Temporary Storage.*** Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) ***Transfer Station.*** A facility used as an adjunct to solid waste collect on system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) ***Water Pollution.*** Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) ***Waters of the City or State.*** All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) ***Yard Wastes.*** All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.

15-403. STORAGE OF SOLID WASTE.

A. The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

B. The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

C. Residential solid waste shall be stored in approved containers of not more than 55 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same. All containers shall have handles or lifting devices or features. Containers shall be lightweight to be easily emptied and of sturdy construction. The weight of any individual container and its contents shall not exceed 75 pounds.

D. Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

E. Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

F. Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

15-404. TEMPORARY STORAGE. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

15-405. **COLLECTION AND DISPOSAL OF SOLID WASTE.** The City shall provide or allow for the collection of all residential solid waste as follows:

A. The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other non-residential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.
2. Commercial-Industrial Collection: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.
3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than sunset.

B. Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

C. Following the effective date of this ordinance, all persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

15-406. COLLECTION AND DISPOSAL OF RECYCLABLES. The City shall provide or allow for the collection of all residential recyclables as follows:

A. All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

B. Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

C. Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

D. All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so construed, maintained and operated as to prevent spillage therefrom.

15-407. COLLECTION VEHICLES.

A. All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

B. All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

15-408. PERMITS.

A. Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

(1) The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);

(2) The characteristics of solid waste to be collected and transported;

(3) The number of solid waste vehicles and equipment to be operated thereunder;

(4) The precise location or locations of solid waste processing or disposal for service to be used;

(5) The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;

(6) An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;

(7) Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

B. Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

C. If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

D. The permit shall be issued for the period of one year, and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

E. Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

15-409. PERMIT SUSPENSION OR REVOCATION.

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the Public Works Director shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

15-410. APPEALS.

A. Any person who feels aggrieved by any act of the Public Works Director, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

B. Any person licensed under this Article and found, after public hearing before the Governing Body, to be in violation of the provisions of this Article, may have any license or permit issued by the City revoked.

C. Nothing in this section shall prejudice the right of the applicant to reapply at a later date for a permit.

15-411. INSURANCE REQUIREMENTS.

The applicant must furnish the City a certificate of insurance showing a minimum public liability insurance coverage in an amount not less than $500,000 for each occurrence. In the event the insurance is canceled during the term of the permit, the insurance carrier shall notify the City in writing no less than 10 days prior to the effective date of such cancellation. The certificate of insurance shall provide that the insurance company agrees to so notify the City, and further, the insurance policy shall contain written provisions which shall place the responsibility for the 10-day written notification upon the company issuing the policy in order that the coverage be considered proper.

15-412. OFFICE AND TELEPHONE REQUIRED.

All licensed contractors shall maintain an office with adequate telephone service to provide for service inquiries and complaints. The City Clerk shall be promptly furnished with any change in telephone or address, if such changes occur after receiving the license or permit.

15-413. INSPECTIONS.

In order to ensure compliance with the laws of this State, the Johnson County Solid Waste Management Plan, County Solid Waste Regulations, this Article and the rules authorized herein, the City Administrator, or his/her designee, is authorized to inspect all phases of solid waste management within the City and within the property of the permit holder. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal a violation of this Article, the City Administrator, or his/her designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

15-414. RULES AND REGULATIONS.

A. The Public Works Director, by and with the consent of the Governing Body, shall define and promulgate reasonable and necessary rules governing the solid waste management system, which rules and regulations shall be filed in the Office of the City Clerk. The rules and regulations shall include, but not be limited to:

Handling of special wastes such as toxic and hazardous wastes, sludges, ashes, agricultural wastes, construction wastes, automobiles, oils, greases, bulky wastes.

B. The Public Works Director may classify certain wastes as hazardous wastes which will require special handling and which should be disposed of only in a manner acceptable to the public safety and banned in a manner which meets all city, county, state and federal regulations.

15-415. **ANTI-SCAVENGER.** It shall be unlawful for any person not licensed by the City and not under contract with the owner or occupant, to remove from private property or public right-of-way any item which has been discarded by the occupant for collection by a person holding a permit to collect solid waste, including any discarded trash or recyclable material.

15-416. **DUMPING ON STREETS.**

A. It shall be unlawful for any person, any owner, occupant or person in charge of any house, building or premise to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits, any rejected material or items. Such described material or items must be deposited in such a manner and placed as prescribed in this Article.

B. Any person performing public work directed toward making improvements may place necessary materials at such places as are prescribed by the specifications of his contract or as approved by the Public Works Director.

15-417. **PROHIBITED PRACTICES.**

A. No person shall engage in the business of collection, transportation or processing of solid waste within the City in a manner which is contrary to any provisions of this ordinance.

B. No person shall engage in the business of collection, transportation or processing of solid waste within the corporate limits of the City without first obtaining a permit as defined and required in Section 15-409.

C. No person shall deposit any type of solid waste within public dumpsters.

D. It shall be unlawful for any person to:

1. Deposit solid waste or recyclables in any solid waste container other than his/her own container without the written consent of the owner of such container and/or with the intent of avoiding payment of those fees charged for solid waste or recyclables collection or disposal, or;
2. Interfere in any manner with solid waste or recyclables collection equipment, or with solid waste or recyclables collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating under agreement with the City of Leawood.
3. Burn solid waste or recyclables, unless an approved incinerator is provided.

15-418. OWNERSHIP OF COLLECTED MATERIAL.
All solid waste and recyclables collected, shall, upon being loaded into collection equipment, become the property of the collection agency.

15-419. EDUCATION, PROMOTION AND MARKETING. Each solid waste and recyclable contractor shall implement public education and awareness programs to educate their clients of the importance of recycling, yard waste composting, and disposal of household hazardous waste. This program shall be implemented regardless of the type of recycling service, if any, that is performed.

15-420. ENFORCEMENT PROVISIONS. The Public Works Director or his/her designee is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in the powers is the right to inspect all phases of solid waste management within the City to assure compliance with this ordinance.

15-421. GENERAL PROVISIONS.

A. Solid waste collectors employed by the City or solid waste collection agencies operating under contract with the City, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste or recyclables therefrom as authorized by agreement.

B. All contracts providing for the storage, collection and transportation of solid waste to which the City is a party shall contain provisions for a performance bond in an amount not less than the total value of the services provided by the contractor. The bond shall be with a good and sufficient surety and shall be approved by the City Clerk before the execution of the contract. The bonds shall provide that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his/her agent, employee, workman, contractor or subcontractor, and such bond shall be conditioned also that the principal will serve, indemnify, hold harmless and protect the City from any and all liability, that he/she will in all respects, comply with all articles of the City and comply with the terms of his/her permit and conditional upon his/her faithful performance of the contract. The form of such bond must be approved by the City Attorney.

15-422. PENALTY. Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than $500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.

SECTION TWO: Repeal of Existing Sections. The existing Article 4 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\415-401C.DOC

ORD1895C

Publication Fees: $207.19

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1895C--6/19/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JUNE 20, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$207.19

ORDINANCE NO. 1895 C

First published in The Legal Record, Tuesday, June 19, 2001.

ORDINANCE NO. 1895C

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE 4, OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO SOLID WASTE MANAGEMENT, AND REPEALING EXISTING ARTICLE 4.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY'S SOLID WASTE MANAGEMENT PLAN. This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) ***Agricultural Waste.*** Solid waste resulting from the production of farm or agricultural products.

(2) ***Approved Container.*** All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 55 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection. The weight of any individual container and its contents shall not exceed 75 pounds.

(3) ***Bulky Waste.*** Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) ***City.*** The City of Leawood, Kansas.

(5) ***Collection.*** Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) ***Collector.*** Any person, public or private, engaged in collecting solid waste and recyclable materials.

(7) ***Combined Refuse Collection.*** The collection of mixed refuse (putrescible and nonputrescible).

(8) ***Combined Solid Waste.*** Solid waste containing both garbage and rubbish.

(9) ***Commercial Waste.*** Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) ***Composting.*** A controlled process of microbial degradation of organic material into a stable, nuisance free humas-like product.

(11) ***Construction Waste.*** Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) ***Contractor.*** The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) ***Demolition Waste.*** Waste material from the destruction of residential, industrial or commercial structures.

(14) ***Disposable Solid Waste Container.*** Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) ***Disposal.*** Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) ***Dump.*** A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) ***Dwelling Unit.*** Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) ***Garbage.*** The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) ***Hazardous Waste.*** Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) ***Incineration.*** The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.

(21) ***Nuisance.*** Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) ***Occupant.*** Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) ***Owner.*** Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) ***Person.*** Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) ***Processing of Waste.*** Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) ***Putrescible Waste.*** The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) ***Recyclable Container.*** Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) ***Recyclable Material.*** Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) ***Refuse.*** (See Solid Waste).

(30) ***Rubbish.*** Nonputrescible solid wastes consisting of combustible and/or noncombustible waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) ***Bulky rubbish*** - (See Bulky Waste).

(b) ***Commercial rubbish*** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.

(c) ***Residential rubbish*** - rubbish resulting from the maintenance and operation of dwelling units.

(31) ***Scavenger.*** A person who scavenges. Scavenge means to collect and remove refuse from.

(32) ***Service.*** The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) ***Solid Waste.*** Unwanted or discarded waste materials in a solid or semi-liquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) ***Commercial solid waste*** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) ***Residential solid waste*** - solid waste resulting from the maintenance and operation of dwelling units.

(34) ***Solid Waste Container.*** Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) ***Solid Waste Disposal Area.*** Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) ***Solid Waste Processing Facility.*** Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) ***Storage.*** Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) ***Temporary Storage.*** Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) ***Transfer Station.*** A facility used as an adjunct to solid waste collect on system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) ***Water Pollution.*** Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) ***Waters of the City or State.*** All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) ***Yard Wastes.*** All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.

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15-403. STORAGE OF SOLID WASTE.

A. The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

B. The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

C. Residential solid waste shall be stored in approved containers of not more than 55 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same. All containers shall have handles or lifting devices or features. Containers shall be lightweight to be easily emptied and of sturdy construction. The weight of any individual container and its contents shall not exceed 75 pounds.

D. Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

E. Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

F. Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

15-404. TEMPORARY STORAGE. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

15-405. COLLECTION AND DISPOSAL OF SOLID WASTE. The City shall provide or allow for the collection of all residential solid waste as follows:

A. The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other non-residential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.
2. Commercial-Industrial Collection: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.
3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than sunset.

B. Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

C. Following the effective date of this ordinance, all persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

15-406. COLLECTION AND DISPOSAL OF RECYCLABLES. The City shall provide or allow for the collection of all residential recyclables as follows:

A. All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

B. Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

C. Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

D. All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so construed, maintained and operated as to prevent spillage therefrom.

15-407. COLLECTION VEHICLES.

A. All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

B. All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

15-408. PERMITS.

A. Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

(1) The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);
(2) The characteristics of solid waste to be collected and transported;
(3) The number of solid waste vehicles and equipment to be operated thereunder;
(4) The precise location or locations of solid waste processing or disposal for service to be used;
(5) The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;
(6) An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;
(7) Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

B. Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

C. If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

D. The permit shall be issued for the period of one year, and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

E. Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

15-409. PERMIT SUSPENSION OR REVOCATION.

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the Public Works Director shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

15-410. APPEALS.

A. Any person who feels aggrieved by any act of the Public Works Director, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

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15-403. STORAGE OF SOLID WASTE.

A. The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

B. The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

C. Residential solid waste shall be stored in approved containers of not more than 55 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same. All containers shall have handles or lifting devices or features. Containers shall be lightweight to be easily emptied and of sturdy construction. The weight of any individual container and its contents shall not exceed 75 pounds.

D. Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

E. Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

F. Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

15-404. TEMPORARY STORAGE. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

15-405. COLLECTION AND DISPOSAL OF SOLID WASTE. The City shall provide or allow for the collection of all residential solid waste as follows:

A. The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other non-residential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.
2. Commercial-Industrial Collection: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.
3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than sunset.

B. Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

C. Following the effective date of this ordinance, all persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

15-406. COLLECTION AND DISPOSAL OF RECYCLABLES. The City shall provide or allow for the collection of all residential recyclables as follows:

A. All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

B. Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

C. Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

D. All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so construed, maintained and operated as to prevent spillage therefrom.

15-407. COLLECTION VEHICLES.

A. All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

B. All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

15-408. PERMITS.

A. Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

(1) The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);
(2) The characteristics of solid waste to be collected and transported;
(3) The number of solid waste vehicles and equipment to be operated thereunder;
(4) The precise location or locations of solid waste processing or disposal for service to be used;
(5) The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;
(6) An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;
(7) Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

B. Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

C. If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

D. The permit shall be issued for the period of one year, and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

E. Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

15-409. PERMIT SUSPENSION OR REVOCATION.

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the Public Works Director shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

15-410. APPEALS.

A. Any person who feels aggrieved by any act of the Public Works Director, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

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ORDINANCE NO. 1895 C

First published in The Legal Record, Tuesday, June 19, 2001.

ORDINANCE NO. 1895C

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE 4, OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO SOLID WASTE MANAGEMENT, AND REPEALING EXISTING ARTICLE 4.

NOW, THEREFORE, *BE IT ORDAINED BY THE GOVERNING BODY OF THE* CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY'S SOLID WASTE MANAGEMENT PLAN. *This Article* shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) ***Agricultural Waste***. Solid waste resulting from the production of farm or agricultural products.

(2) ***Approved Container***. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 55 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection. The weight of any individual container and its contents shall not exceed 75 pounds.

(3) ***Bulky Waste***. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) ***City***. The City of Leawood, Kansas.

(5) ***Collection***. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) ***Collector***. Any person, public or private, engaged in collecting solid waste and recyclable materials.

(7) ***Combined Refuse Collection***. The collection of mixed refuse (putrescible and nonputrescible).

(8) ***Combined Solid Waste***. Solid waste containing both garbage and rubbish.

(9) ***Commercial Waste***. Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) ***Composting***. A controlled process of microbial degradation of organic material into a stable, nuisance free humus-like product.

(11) ***Construction Waste***. Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) ***Contractor***. The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) ***Demolition Waste***. Waste material from the destruction of residential, industrial or commercial structures.

(14) ***Disposable Solid Waste Container***. Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) ***Disposal***. Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) ***Dump***. A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) ***Dwelling Unit***. Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) ***Garbage***. The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) ***Hazardous Waste***. Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) ***Incineration***. The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.

(21) ***Nuisance***. Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) ***Occupant***. Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) ***Owner***. Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) ***Person***. Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) ***Processing of Waste***. Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) ***Putrescible Waste***. The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) ***Recyclable Container***. Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) ***Recyclable Material***. Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) ***Refuse***. (See Solid Waste).

(30) ***Rubbish***. Nonputrescible solid wastes consisting of combustible and/or noncombustible waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) ***Bulky rubbish*** - (See Bulky Waste).

(b) ***Commercial rubbish*** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.

(c) ***Residential rubbish*** - rubbish resulting from the maintenance and operation of dwelling units.

(31) ***Scavenger***. A person who scavenges. Scavenge means to collect and remove refuse from.

(32) ***Service***. The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) ***Solid Waste***. Unwanted or discarded waste materials in a solid or semi-liquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) ***Commercial solid waste*** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) ***Residential solid waste*** - solid waste resulting from the maintenance and operation of dwelling units.

(34) ***Solid Waste Container***. Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) ***Solid Waste Disposal Area***. Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) ***Solid Waste Processing Facility***. Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) ***Storage***. Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) ***Temporary Storage***. Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) ***Transfer Station***. A facility used as an adjunct to solid waste collect on system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) ***Water Pollution***. Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) ***Waters of the City or State***. All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) ***Yard Wastes***. All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.

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B. Any person licensed under this Article and found, after public hearing before the Governing Body, to be in violation of the provisions of this Article, may have any license or permit issued by the City revoked.

C. Nothing in this section shall prejudice the right of the applicant to reapply at a later date for a permit.

15-411. **INSURANCE REQUIREMENTS.**
The applicant must furnish the City a certificate of insurance showing a minimum public liability insurance coverage in an amount not less than $500,000 for each occurrence. In the event the insurance is canceled during the term of the permit, the insurance carrier shall notify the City in writing no less than 10 days prior to the effective date of such cancellation. The certificate of insurance shall provide that the insurance company agrees to so notify the City, and further, the insurance policy shall contain written provisions which shall place the responsibility for the 10-day written notification upon the company issuing the policy in order that the coverage be considered proper.

15-412. **OFFICE AND TELEPHONE REQUIRED.**
All licensed contractors shall maintain an office with adequate telephone service to provide for service inquiries and complaints. The City Clerk shall be promptly furnished with any change in telephone or address, if such changes occur after receiving the license or permit.

15-413. **INSPECTIONS.**
In order to ensure compliance with the laws of this State, the Johnson County Solid Waste Management Plan, County Solid Waste Regulations, this Article and the rules authorized herein, the City Administrator, or his/her designee, is authorized to inspect all phases of solid waste management within the City and within the property of the permit holder. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal a violation of this Article, the City Administrator, or his/her designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

15-414. **RULES AND REGULATIONS.**

A. The Public Works Director, by and with the consent of the Governing Body, shall define and promulgate reasonable and necessary rules governing the solid waste management system, which rules and regulations shall be filed in the Office of the City Clerk. The rules and regulations shall include, but not be limited to:
   Handling of special wastes such as toxic and hazardous wastes, sludges, ashes, agricultural wastes, construction wastes, automobiles, oils, greases, bulky wastes.

B. The Public Works Director may classify certain wastes as hazardous wastes which will require special handling and which should be disposed of only in a manner acceptable to the public safety and banned in a manner which meets all city, county, state and federal regulations.

15-415. **ANTI-SCAVENGER.** It shall be unlawful for any person not licensed by the City and not under contract with the owner or occupant, to remove from private property or public right-of-way any item which has been discarded by the occupant for collection by a person holding a permit to collect solid waste, including any discarded trash or recyclable material.

15-416. **DUMPING ON STREETS.**

A. It shall be unlawful for any person, any owner, occupant or person in charge of any house, building or premise to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits, any rejected material or items. Such described material or items must be deposited in such a manner and placed as prescribed in this Article.

B. Any person performing public work directed toward making improvements may place necessary materials at such places as are prescribed by the specifications of his contract or as approved by the Public Works Director.

15-417. **PROHIBITED PRACTICES.**

A. No person shall engage in the business of collection, transportation or processing of solid waste within the City in a manner which is contrary to any provisions of this ordinance.

B. No person shall engage in the business of collection, transportation or processing of solid waste within the corporate limits of the City without first obtaining a permit as defined and required in Section 15-409.

C. No person shall deposit any type of solid waste within public dumpsters.

D. It shall be unlawful for any person to:
   1. Deposit solid waste or recyclables in any solid waste container other than his/her own container without the written consent of the owner of such container and/or with the intent of avoiding payment of those fees charged for solid waste or recyclables collection or disposal, or;
   2. Interfere in any manner with solid waste or recyclables collection equipment, or with solid waste or recyclables collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating under agreement with the City of Leawood.
   3. Burn solid waste or recyclables, unless an approved incinerator is provided.

15-418. **OWNERSHIP OF COLLECTED MATERIAL.**
All solid waste and recyclables collected, shall, upon being loaded into collection equipment, become the property of the collection agency.

15-419. **EDUCATION, PROMOTION AND MARKETING.** Each solid waste and recyclable contractor shall implement public education and awareness programs to educate their clients of the importance of recycling, yard waste composting, and disposal of household hazardous waste. This program shall be implemented regardless of the type of recycling service, if any, that is performed.

15-420. **ENFORCEMENT PROVISIONS.** The Public Works Director or his/her designee is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in the powers is the right to inspect all phases of solid waste management within the City to assure compliance with this ordinance.

15-421. **GENERAL PROVISIONS.**

A. Solid waste collectors employed by the City or solid waste collection agencies operating under contract with the City, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste or recyclables therefrom as authorized by agreement.

B. All contracts providing for the storage, collection and transportation of solid waste to which the City is a party shall contain provisions for a performance bond in an amount not less than the total value of the services provided by the contractor. The bond shall be with a good and sufficient surety and shall be approved by the City Clerk before the execution of the contract. The bonds shall provide that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his/her agent, employee, workman, contractor or subcontractor, and such bond shall be conditioned also that the principal will serve, indemnify, hold harmless and protect the City from any and all liability, that he/she will in all respects, comply with all articles of the City and comply with the terms of his/her permit and conditional upon his/her faithful performance of the contract. The form of such bond must be approved by the City Attorney.

15-422. **PENALTY.** Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than $500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.

SECTION TWO: Repeal of Existing Sections. The existing Article 4 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

Peggy J. Dunn

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1894

ORDINANCE REZONING FROM AG, AGRICULTURE, TO RP-1, PLANNED SINGLE FAMILY RESIDENTIAL, FOR A RESIDENTIAL SUBDIVISION, LOCATED NORTH OF 143RD STREET, EAST OF NALL AVENUE, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS. [ST. MICHAEL THE ARCHANGEL CATHOLIC CHURCH]

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agriculture, to RP-1, Planned Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 21st day of May, 2001.

APPROVED by the Mayor this 21st day of May, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\4STMIKEA.DOC

SHAFER, KLINE & WARREN, INC. ■ 11100 West 91st Street, Overland Park, Kansas 66214-3216 ■ 913-888-7800 FAX: 913-888-7868
Turtle-Ayers-Woodward founded 1885
Shafer Griffith Shafer founded 1946
A.C. Kirkwood & Associates founded 1947
Shafer & Kline founded 1950
Hamilton & Associates founded 1981
Offices in: Iola, Kansas
Overland Park, Kansas
Chillicothe, Missouri
Kansas City, Missouri
Macon, Missouri
WWW.SKW-INC.COM

EXHIBIT A

March 2, 2001

LEGAL DESCRIPTION FOR
PROPOSED ~~RP-4 ZONING~~ RP-1 ZONING
PART OF SW¼, SECTION 33-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the SW¼ of Section 33, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the SW¼ of said Section 33; thence N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 869.01 feet, to the true point of beginning of subject tract; thence continuing N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 458.07 feet, to the Northwest corner of the SW¼ of the SW¼ of said Section 33; thence N 87° 50' 04" E, along the North line of the SW¼ of the SW¼ of said Section 33, a distance of 994.40 feet, to the Northeast corner of the W½ of the E½ of the SW¼ of the SW¼ of said Section 33; thence S 1° 56' 37" E, along the East line of the W½ of the E½ of the SW¼ of the SW¼ of said Section 33, a distance of 462.12 feet; thence S 88° 04' 04"W, along a line perpendicular to the West line of the SW¼ of said Section 33, a distance of 994.48 feet, to the true point of beginning of subject tract.

The above described tract of land contains 10.50 acres, more or less.

By:

Douglas A. Farrar, KS LS-720
March 2, 2001

DOUGLAS A. FARRAR
REGISTERED
LS-720
KANSAS
LAND SURVEYOR

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ORD1894

Publication Fees: $35.49

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1894--5/22/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

MAY 23, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$35.49

ORDINANCE NO. 1894

First published in The Legal Record, Tuesday, May 22, 2001.

ORDINANCE NO. 1894

ORDINANCE REZONING FROM AG, AGRICULTURE, TO RP-1, PLANNED SINGLE FAMILY RESIDENTIAL, FOR A RESIDENTIAL SUBDIVISION, LOCATED NORTH OF 143RD STREET, EAST OF NALL AVENUE, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS. {ST. MICHAEL THE ARCHANGEL CATHOLIC CHURCH}

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

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SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 21st day of May, 2001.

APPROVED by the Mayor this 21st day of May, 2001.

{SEAL}

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

EXHIBIT A

March 2, 2001

LEGAL DESCRIPTION FOR
PROPOSED ~~REZONING~~ RP-1 ZONING
PART OF SW¼, SECTION 33-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the SW¼ of Section 33, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the SW¼ of said Section 33; thence N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 869.01 feet, to the true point of beginning of subject tract; thence continuing N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 458.07 feet, to the Northwest corner of the SW¼ of the SW¼ of said Section 33; thence N 87° 50' 04" E, along the North line of the SW¼ of the SW¼ of said Section 33, a distance of 994.40 feet, to the Northeast corner of the W½ of the E½ of the SW¼ of the SW¼ of said Section 33; thence S 1° 56' 37" E, along the East line of the W½ of the E½ of the SW¼ of the SW¼ of said Section 33, a distance of 462.12 feet; thence S 88° 04' 04" W, along a line perpendicular to the West line of the SW¼ of said Section 33, a distance of 994.48 feet, to the true point of beginning of subject tract.

The above described tract of land contains 10.50 acres, more or less.

By: Douglas A. Farrar, KS LS-720
March 2, 2001

DOUGLAS A. FARRAR
KANSAS
LAND SURVEYOR

Franchise

ORDINANCE NO. 1893

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL

1.1 **Preservation of Police Power Authority.** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 **Defined Terms.** For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto .

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B..

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchises Non-Exclusive**. This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying **Communications Services** on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in **Exhibit A**. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No interference**. Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 **Additional Facilities Requirements; Planned Infrastructure.** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 **Franchisee Responsible for Costs.** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; *Communications* Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise**. Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities**. Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee: Metromedia Fiber Network Services, Inc. 360 Hamilton Avenue White Plains, NY 10601 Attn:Vice President, Legal and regulatory Affairs	The City: City of Leawood, Kansas City Clerk 4800 Town Center Drive Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee's unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final

passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 21st day of May, 2001.

Approved by the Mayor the 21st day of May, 2001.

Publication Dates: Tuesday, May 29, 2001: Tuesday, June 5, 2001

Effective Date: July 21, 2001

(SEAL)

Peggy J. Dunn, Mayor

ATTEST

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 **Title.** This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding

an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance,

indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. **"Communications Franchise Fee"** means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. **"Communications Service"** means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. **"Complaint"** means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. **"Converter"** means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. **"Direct Incremental Costs"** means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. **"Drop"** means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. **"Facilities"** means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. **"Franchise"** means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. **"Franchise Area,"** unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. **"Franchisee"** means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

BB. **"Grantee"** means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. **"Gross Receipts"** means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers

that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from

the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. **"Institutional Network" or "I-Net"** means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. **"Institutional Network Services"** means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated

voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. **"Institutional Users"** means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. **"Internet Access Service"** means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. **"Linear Foot"** means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. **"Normal Business Hours"** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. **"Normal Operating Conditions"** means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. **"Open Video Services"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. **"Provider"** means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

OO. **"Public Building"** means any building owned or for the greater part occupied by the City or other governmental unit.

PP. **"Renewal"** means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. **"Reseller Service Provider"** means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. **"ROW Ordinance"** means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter .

UU. **"Service Interruption"** means the loss of picture or sound on one or more Channels on the Cable System.

VV. **"Standard Installation"** means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. **"Subscriber"** means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. **"System"** means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. **"Telecommunications Act"** means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. **"Telecommunications Service"** means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. **"Trained Representative"** means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City

without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public

interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements

pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees**. Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered . Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit

a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way . Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 Cable Franchise Requirements.

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a

legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a

Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one

hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor

fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service**. Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power**. Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion**. Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

   (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

   (ii) A problem established as having been non-Cable System or Cable Service in origin.

   A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of

time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment .

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, ~~the~~ and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate

compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the

City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully

remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

   (i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

   (ii) For all other violations, $250 per day per violation.

   The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur,

and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in

the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

A. **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Grantee shall be subject to the

rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or

replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good

cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of

Excess Conduit Installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all

other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORD1893

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Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 2 consecutive week(s), as follows:

ORDINANCE NO. 1893--5/29/01 & 6/5/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JUNE 6, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$2,010.16

ORDINANCE NO. 1893

First published in The Legal Record, Tuesday, May 29, 2001.

ORDINANCE NO. 1893

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER *NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO* CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL

1.1 **Preservation of Police Power Authority.** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 ***Defined Terms.*** *For purposes of this Franchise, the terms, phrases, words, and their* derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto .

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B..

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchises Non-Exclusive.** This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law..

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying **Communications Services** on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in **Exhibit A.** As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to *challenge in good faith such requirements.*

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to *the extent not in contravention of state or federal law. The City makes no express or* implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No Interference.** Franchisee shall construct and maintain its Facilities so as not to *interfere with other users of the Rights-of-Way. Except as may otherwise be provided,* the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the *Rights-of-Way. Franchisee shall further make its installed facilities available to other* Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 **Additional Facilities Requirements; Planned Infrastructure.** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of *Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such* sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 **Franchisee Responsible for Costs.** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, *maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-*Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per *month for the first* mile of linear Facilities, or part thereof, plus $.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel *for the City acceptable to the City) and hold harmless the City, its elected officials, officers,* employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that *the Franchise has been lawfully authorized,* and that *Franchisee waives any claim to challenge the* lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effecuve date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee:	The City:
Metromedia Fiber Network Services, Inc.	City of Leawood, Kansas
360 Hamilton Avenue	City Clerk
White Plains, NY 10601	4800 Town Center Drive
Attn: Vice President, Legal and regulatory Affairs	Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the *City Clerk of the City and Franchisee's unconditional acceptance in writing of* the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 21st day of May, 2001.

Approved by the Mayor the 21st day of May, 2001.

Publication Dates: Tuesday, May 29, 2001: Tuesday, June 5, 2001

Effective Date: July 21, 2001

(SEAL)

Peggy J. Dunn, Mayor

ATTEST

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 **Title.** This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is *determined to be operating pursuant to a valid franchise or Agreement.*

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed *in the public* interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

CONTINUED ON NEXT PAGE

SECTION EIGHT: Copies of Tariffs and Filings.

The Company shall maintain a file of, and keep up to date, all tariffs, rules, regulations, and policies approved by the Kansas Corporation Commission (KCC) pertaining to the franchise. The Company shall timely provide the City with copies of all tariffs, and related information relevant to the Company's tariff application or proposal before the KCC affecting rates and services relating to municipal use or otherwise impacting the City. In addition, the Company will provide the City, at the City's request, copies of other filings which it makes with the KCC, including, but not limited to, its annual report, all advice letters, and all pre-filed testimony and exhibits. Receipt of any such matters by the City shall not constitute service of documents otherwise required by law nor shall such receipt constitute any entry of appearance by the City or acknowledgment of jurisdiction over the City in such matters.

SECTION NINE: Right to Assign.

This franchise shall be assignable only in accordance with the laws of the state of Kansas, as the same may exist at the time when any assignment is made.

SECTION TEN: Termination and Forfeiture of Franchise.

In case of failure on the part of said Grantee, its successors and assigns, to comply with any of the provisions of this ordinance, or if said Grantee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, said Grantee, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the Grantor shall carry out the following proceedings. Before Grantor proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice upon the manager of said Grantee, at its principal office in Grantor City, and upon the trustee or trustees in any deed of trust securing bonds of said Grantee of records in Johnson County, Kansas, or the office of the Secretary of State of Kansas, by mailing notice to such trustee or trustees to the address designated in such trust deed, setting forth in detail in such notice the neglect or failure complained of, and said Grantee shall have ninety (90) days thereafter in which to comply with the conditions of this franchise. If at the end of such ninety (90) day period the Grantor deems that the conditions of such franchise have not been complied with by the Grantee and that such franchise is subject to cancellation by reason thereof, the Grantor, in order to terminate such franchise, shall enact an ordinance setting out the grounds upon which said franchise or agreement is to be canceled or terminated. If within thirty (30) days after the effective date of said ordinance the Grantee shall not have instituted an action, either in District Court of Johnson County, Kansas, or some other court of competent jurisdiction to determine whether or not the Grantee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period the Grantee does institute an action, as above provided, to determine whether or not Grantee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered. Provided, however, that the failure of said Grantee to comply with any of the provisions of this ordinance or the doing or causing to be done by said Grantee of anything prohibited by or in violation of the terms of this ordinance shall not be grounds for the forfeiture thereof when such act or omission on the part of the said Grantee is due to any cause or delay beyond the control of said Grantee, its successors and assigns, or bona fide legal proceedings.

SECTION ELEVEN: Rights and Duties of Grantee Upon Expiration of Franchise.

Upon expiration of this franchise, whether by lapse of time, by agreement between Grantee and Grantor, or by forfeiture thereof, the Grantee shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of the Grantee, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which said pipes, laterals and other equipment are removed to as good condition as the same were before said removal was effected.

SECTION TWELVE: Acceptance of Terms by Grantee.

Within sixty (60) days after the final passage and approval of this ordinance, Grantee shall file with the City Clerk of the City of Lenexa its acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between Grantor and Grantee subject to the provisions of the laws of the state of Kansas.

SECTION THIRTEEN: Conditions of Franchise.

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond Grantee's control. This franchise shall not be exclusive.

SECTION FOURTEEN: Invalidity of Ordinance.

If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

SECTION FIFTEEN: Effective Date of Ordinance.

This ordinance shall take effect and be in force from and after its passage and publication as required by law.

SECTION SIXTEEN: Repeal of Conflicting Ordinances.

Ordinance No. 4189, which was heretofore granted to this Grantee, and all other such ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, shall be canceled, annulled, repealed, and set aside, provided further, that this ordinance shall not take effect or be in force until it shall have been read in full at three (3) regular weekly meetings of the Governing Body of the City of Lenexa, nor until and immediately after its final passage it shall be published in the official City paper once each week for two consecutive weeks, and such ordinance shall not take effect or be in force until and after the expiration of sixty (60) days from the date of its final passage nor, if pending the final passage and taking effect of said ordinance, an election shall be called as provided by law, then said ordinance shall not take effect or become in force until the same shall have been duly approved as by law provided.

PASSED AND APPROVED by the Governing Body of Lenexa, Kansas, this 15th day of May, 2001.

Joan Bowman, Mayor

CITY OF LENEXA CORPORATE SEAL KANSAS

ATTEST:

Mary Sue Fry, City Clerk

APPROVED AS TO FORM:

Eric R. Arner, Senior Assistant City Attorney

First published in The Legal Record, Tuesday, May 29, 2001.

ORDINANCE NO. 4404

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE INTERSECTION IMPROVEMENTS TO 93rd STREET AND MARSHALL DRIVE TO ROSEHILL ROAD.

WHEREAS, the Governing Body of the City of Lenexa, Kansas did by Resolution No. 2001-68 declare the necessity for, and authorize a survey and description of lands or interests therein to be acquired by the City for the following:

> Improvements to include redesign of the intersections at 93rd Street and Marshall Drive and 93rd Street and Rosehill Road, installation of a modified cul-de-sac at 93rd Street and Rosehill Road and closure and eradication of a small portion of Rosehill Road between the East leg of 93rd Street and the current West leg of 93rd Street, and any and all appurtenances thereto.

WHEREAS, said survey and description was prepared and is maintained at the Lenexa City Hall.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: It is hereby authorized and provided that the lands or interests therein, hereafter described, be acquired for the following improvement:

> Improvements to include redesign of the intersections at 93rd Street and Marshall Drive and 93rd Street and Rosehill Road, installation of a modified cul-de-sac at 93rd Street and Rosehill Road and closure and eradication of a small portion of Rosehill Road between the East leg of 93rd Street and the current West leg of 93rd Street, and any and all appurtenances thereto.

CONDEMNEES:	B.A. Karbank and Co. and all other persons holding any interest in the property herein described
SITUS ADDRESS:	12600 West 93rd Street Lenexa, Kansas 66215
MAILING ADDRESS:	1200 Main Street, Apt. 3910 Kansas City, Missouri 64105
LIEN HOLDER:	State Farm Life Insurance Company One State Farm Plaza Bloomington, Illinois 61710
EASEMENT HOLDERS:	The Kansas City Power and Light Company in Misc. Book 37, page 519 and Misc. Book 202, page 233. Oneok, successors in interest to the Gas Service Company in Misc. Book 67, page 606. St. Louis-San Francisco Railway Company in Misc. Book 194, page 47.
INTEREST IN PROPERTY:	Ferguson Enterprises, Inc. 12600 W. 93rd Street Lenexa, Kansas 66215

TEMPORARY CONSTRUCTION EASEMENT:

All that part of the Northwest Quarter of the Southeast Quarter of Section 34, Township 12 South, Range 24 East, in the City of Lenexa, Johnson County, Kansas, described as follows:

Commencing at the Southwest corner of the Southeast Quarter of Section 34, Township 12 South, Range 24 East; thence North 2 degrees 12 minutes 32 seconds West along the West line of the Southeast Quarter of said Section 34 a distance of 1373.52 feet to a point on the Westerly prolongation of the North right of way line of 93rd Street; thence North 87 degrees 50 minutes 03 seconds East along said right of way and its prolongation a distance of 216.17 feet to the POINT OF BEGINNING of subject tract; thence continuing North 87 degrees 50 minutes 03 seconds East along said right of way line a distance of 125.43 feet to a point; thence North 2 degrees 09 minutes 57 seconds West a distance of 2.00 feet to a point; thence South 87 degrees 50 minutes 03 seconds West a distance of 37.21 feet to a point; thence North 63 degrees 24 minutes 35 seconds West a distance of 24.99 feet to a point; thence North 2 degrees 29 minutes 21 seconds West a distance of 32.85 feet to a point; thence South 87 degrees 30 minutes 39 seconds West a distance of 48.08 feet to a point; thence South 19 degrees 00 minutes 17 seconds West a distance of 49.97 feet to the POINT OF BEGINNING and containing 2923 Square Feet or 0.067 Acres, more or less.

PERMANENT RIGHT OF WAY:

All that part of the Northwest Quarter of the Southeast Quarter of Section 34, Township 12 South, Range 24 East, in the City of Lenexa, Johnson County, Kansas, described as follows:

Commencing at the Southwest corner of the Southeast Quarter of Section 34, Township 12 South, Range 24 East; thence North 2 degrees 12 minutes 32 seconds West along the West line of the Southeast Quarter of said Section 34 a distance of 1373.52 feet to a point on the Westerly prolongation of the North right of way line of 93rd Street; thence North 87 degrees 50 minutes 03 seconds East along said prolongation a distance of 30.00 feet to a point on the East right of way line of Rosehill Road, said point being the POINT OF BEGINNING of subject tract; thence North 2 degrees 12 minutes 32 seconds West along said East right of way line a distance of 37.34 feet to a point; thence in a Southeasterly direction along a curve to the left whose initial tangent bears South 13 degrees 15 minutes 43 seconds East, having a radius of 593.00 feet, through a central angle of 0 degrees 26 minutes 19 seconds, an arc distance of 4.54 feet to a point of compound curvature; thence along a curve to the left, having a radius of 43.00 feet, through a central angle of 63 degrees 14 minutes 26 seconds, an arc distance of 47.46 feet to a point on the North right of way line of said 93rd Street; thence South 87 degrees 50 minutes 03 seconds West along said right of way line a distance 31.70 feet to the POINT OF BEGINNING and containing 343 Square Feet or 0.008 Acres, more or less.

SECTION TWO: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq., the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinbefore described.

SECTION THREE: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

APPROVED by the Governing Body this 22nd day of May, 2001.

SIGNED by the Mayor this 22nd day of May, 2001.

Joan Bowman, Mayor

CITY OF LENEXA CORPORATE SEAL KANSAS

ATTEST:

Mary Sue Fry, City Clerk

APPROVED AS TO FORM:

Rebecca A. Yocham, Assistant City Attorney

First published in The Legal Record, Tuesday, May 29, 2001.

RESOLUTION NO. 2001-68

A RESOLUTION DECLARING IT NECESSARY TO APPROPRIATE PRIVATE PROPERTY FOR PUBLIC USE FOR IMPROVEMENTS TO 93RD STREET [MARSHALL DRIVE TO ROSEHILL ROAD] IN LENEXA, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Lenexa, Kansas ("City") does hereby authorize and direct the following described improvements:

> Improvements to include redesign of the intersections at 93rd Street and Marshall Drive and 93rd Street and Rosehill Road, installation of a modified cul-de-sac at 93rd Street and Rosehill Road and closure and eradication of a small portion of Rosehill Road between the East leg of 93rd Street and the current West leg of 93rd Street, and any and all appurtenances thereto.

WHEREAS, it is necessary to acquire private property for the construction of the improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LENEXA, KANSAS:

SECTION ONE: It is hereby declared necessary to acquire private property for the use of the City of Lenexa, Kansas, for the following described improvements:

> Improvements to include redesign of the intersections at 93rd Street and Marshall Drive and 93rd Street and Rosehill Road, installation of a modified cul-de-sac at 93rd Street and Rosehill Road and closure and eradication of a small portion of Rosehill Road between the East leg of 93rd Street and the current West leg of 93rd Street, and any and all appurtenances thereto.

SECTION TWO: It is hereby authorized and directed that a survey and description of the lands or interests therein to be acquired be made by the City Engineering staff and filed with the City Clerk of the City of Lenexa, Kansas.

SECTION THREE: This resolution shall take effect and be in force from and after its published in the official City newspaper.

PASSED by the City Council this 22nd day of May, 2001.

APPROVED by the Mayor this 22nd day of May, 2001.

Joan Bowman, Mayor

CITY OF LENEXA CORPORATE SEAL KANSAS

Attest:

Mary Sue Fry, City Clerk

Approved As To Form:

Rebecca A. Yocham, Assistant City Attorney

ORDINANCE NO. 1893

CONTINUED FROM PAGE 12

requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable *federal, state and local laws*, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or *common control with, such Franchisee.*

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the *Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may,* from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer *network of both federal and non-*federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall *authorize use of the Rights-of-Way for Cable Internet* Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed *to provide* Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video *programming directly to Subscribers*, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by *more than one user in the same or connected conduit or* location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means *the transmission via Facilities, in* whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" *means an electronic device that converts signals to a* frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area,**" unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**.

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a Franchisee or its Affiliates for *Communications Services originating,* terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch *Tone, Custom Calling Services and measured local calls;*

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet *Service (if it is not required to be included in the Gross Receipts of a* separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal *law; payments* or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable *Subscribers; or (v) payments or other consideration received by the Cable* Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "**Institutional Users**" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be *considered a single facility for purposes of* calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by *Franchisee solely for Cable Services or other purposes* that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

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conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "**Open Video Services**" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "**Provider**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**

OO. "**Public Building**" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "**Renewal**" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "**Reseller Service Provider**" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "**Rights-of-Way**" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "**ROW Ordinance**" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities, designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "**Telecommunications Service**" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "**Trained Representative**" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $ .21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under-Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way. Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

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conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "**Open Video Services**" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person..

NN. "**Provider**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

OO. "**Public Building**" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "**Renewal**" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "**Reseller Service Provider**" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "**Rights-of-Way**" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "**ROW Ordinance**" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or *Franchise.*

XX. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "**Telecommunications Service**" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "**Trained Representative**" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such *additional information* that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, *and all other City codes and ordinances in effect* as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law..

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2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under-Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the *rate of one and one-half* percent per month, unless such other maximum rate is established by Law..

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way . Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

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thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area,**" unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "**Institutional Users**" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

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violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, the and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

(ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices and charges;

(v) A copy, if any, of the Grantee's current Subscriber Service contract; and

(vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

(vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

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D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

   (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

   (ii) A problem established as having been non-Cable System or Cable Service in origin.

   A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

   (i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

   (a) Product and Services offered;

   (b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

   (c) Installation and service maintenance policies;

   (d) Instructions on how to use Services;

   (e) Channel positions of programming offered on a System; and

   (f) Billing and Complaint procedures, including the name, address and telephone number of the City.

   (ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

   (i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

   (ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

   (iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

   (iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

   (i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

   (a) The date after which the fee will be imposed if the balance is not paid; and

   (b) The amount of the fee that will be imposed; and

   (ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

   (i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

   (ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, ~~the~~ and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

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violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. *This section shall not apply to a* Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be *further limited by the Cable Franchise.* No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a *Franchise* excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and *exclusive use of Franchisee. Any Franchise* or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the *privilege of transacting* and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for *placing devices on or in* poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-*of-Way.*

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted *pursuant to this Ordinance* shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and *conditions of any Cable Franchises* granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of *identical terms or conditions,* or limit the enforceability of conditions that are freely negotiated.

3. Further provided, *nothing in this subsection* shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for *such additional* franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth *in this Franchise,* taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the *existing Cable Franchisee to modify* the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, *City may, if it so elects,* adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B *shall apply to all* Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. *A Cable* Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated *therewith* as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any *conflict between the terms and conditions* of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a *change in state or federal law* which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A *nonrefundable Application Fee* as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a *time and date approved by the Council.* Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with *applicable law* including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a *Franchise, the City* may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a *written* report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide *Cable Services to the entire Franchise* Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete *construction of the proposed* Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, *and operate the proposed* Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or *other* documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are *available.*

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's *technical qualifications* to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional *Cable Systems and the potential* disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable *Service* outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future *cable-related needs of the City.* Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's *Cable System including the* general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the *City.*

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the *Franchise Area in accordance* with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one *(1) outlet, provide monthly Basic Cable Service,* without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and *Basic Cable* Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, *the institution may add outlets at its own* expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon *request.* Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take *reasonable precautions to prevent* any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of *such outlets* shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** *Unless otherwise specified* in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall *provide* upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use *by Grantee; (b) such use* by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition *with the Grantee. The Grantee shall* not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert *System rules and regulations.* Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed *upon modifications to the Franchise* to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** *Within twelve (12) months of activation* of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable *System* Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has *been activated for interactive service* provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing *Body for the period of the applicable Franchise.*

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access *Channels, as specified in their Franchise.* All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. *Oversight and administration* of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the *Access Channels, proof of performance testing* throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and *to ensure that the level of* technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other *applicable laws.* The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** *Tests for* a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test-locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center *shall be open at least during Normal Business* Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during *Normal Business Hours.*

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. *Inquiries received after Normal* Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. *If a call must be transferred* to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an *inbound telephone system* upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure *compliance with the* telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

(i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

(ii) For all other violations, $250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all *rights and* privileges pertaining thereto, in the event that any of the following occur, and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

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

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval:** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good

CONTINUED ON PAGE 12

ORDINANCE NO. 1893

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cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit Installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

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requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORD1893

Publication Fees: $2,010.16

The Legal Record
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(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 2 consecutive week(s), as follows:

ORDINANCE NO. 1893--5/29/01 & 6/5/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JUNE 6, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$2,010.16

ORDINANCE NO. 1893

First published in The Legal Record, Tuesday, May 29, 2001.

ORDINANCE NO. 1893

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL.

1.1 ***Preservation of Police Power Authority.*** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 **Defined Terms.** For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto.

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchises Non-Exclusive.** This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying **Communications Services** on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in **Exhibit A**. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No Interference.** Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 ***Additional Facilities Requirements; Planned Infrastructure.*** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 ***Franchisee Responsible for Costs.*** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 ***Enforcement; Attorneys' Fees.*** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee: Metromedia Fiber Network Services, Inc. 360 Hamilton Avenue White Plains, NY 10601 Attn: Vice President, Legal and regulatory Affairs	The City: City of Leawood, Kansas City Clerk 4800 Town Center Drive Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee's unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 21st day of May, 2001.

Approved by the Mayor the 21st day of May, 2001.

Publication Dates: Tuesday, May 29, 2001; Tuesday, June 5, 2001.

Effective Date: July 21, 2001

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 Title. This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

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thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, *whether given verbally or in writing by or on behalf of* said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to *construction and use of public property.*

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, *controlled by, or under common control with the Franchisee; provided that* Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. *L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987)* as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "***Cable Franchise***" *means an initial Cable Franchise authorization, or* renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from *Communications Services and shall be required to have a* Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only *pursuant to a Communications Franchise. All prior payments to the City* attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed *transmission paths and associated signal generation, reception, and control* equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which *is subject, in whole or in* part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, *unless the extent of such use is solely to provide interactive on-*demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, *but shall not have any meaning inconsistent with generally accepted* accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or *location. Collocation* does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet *Service,*" as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but *these services shall be subject to separate cable franchising requirements* and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City *authorizing use of the Rights-of-Way for any Cable Service or* Communication Service.

Z. "**Franchise Area,**" unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**.

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a *Franchisee or its Affiliates for Communications Services originating,* terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. *Cellular and other wireless communication services revenue;* provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable *Internet Service, unless such service revenues are validly required* to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. *All other applicable revenues not listed herein.*

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from *Affiliates* where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. *All revenue from or relating to or connected with* Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "***Gross Revenues***" *means any revenue actually received by a Grantee, or* by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law *revenue derived from pay cable fees, installation and reconnection fees,* leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the *franchising jurisdictions served by the Grantee's Cable System on a per* Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public *interest community events.*

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both *within the primary cable* network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "***Institutional Users***" *means governmental, educational, and other non-*profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both *federal and non-federal* interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the *Internet or otherwise* and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, *wire, fiber,* conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of *conduit up to and including* 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to *this Exhibit B.* Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. *In all cases,* Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or *conducted by the Cable* Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

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conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. **"Open Video Services"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person..

NN. **"Provider" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

OO. **"Public Building"** means any building owned or for the greater part occupied by the City or other governmental unit.

PP. **"Renewal"** means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. **"Reseller Service Provider"** means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. **"ROW Ordinance"** means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter .

UU. **"Service Interruption"** means the loss of picture or sound on one or more Channels on the Cable System.

VV. **"Standard Installation"** means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. **"Subscriber"** means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. **"System"** means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. **"Telecommunications Act"** means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. **"Telecommunications Service"** means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. **"Trained Representative"** means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $ .21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered . Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way . Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

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conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. **"Open Video Services"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. **"Provider" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**

OO. **"Public Building"** means any building owned or for the greater part occupied by the City or other governmental unit.

PP. **"Renewal"** means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. **"Reseller Service Provider"** means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. **"ROW Ordinance"** means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. **"Service Interruption"** means the loss of picture or sound on one or more Channels on the Cable System.

VV. **"Standard Installation"** means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. **"Subscriber"** means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. **"System"** means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. **"Telecommunications Act"** means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. **"Telecommunications Service"** means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. **"Trained Representative"** means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 ***Unlawful to Operate* Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 ***Nature of Rights Granted* by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and *Application Fee* Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 ***Standards* and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service *and Open* Video Systems (OVS); Separate Franchise *Required*.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $ .21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 ***Bundled* Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 ***Timing of Payment of* Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on *Late Payments* and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

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2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

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2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of *Operation* Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise, and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

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thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area,**" unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.**.

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "**Institutional Users**" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

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violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment *agreements before locating its Facilities on the Facilities* owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of *Communications Services; (ii) any permit, agreement, or authorization* required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A *nonrefundable Application Fee as may be hereinafter established by the* City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. ***Franchise Renewal.*** *Franchise Renewals shall be in accordance with* applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact *on the public Rights-of-Way, on the quality and availability of services to* the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the *requisite funds to construct and operate the proposed Cable System* are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 Design, Services and Capabilities.

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) *feet. Drops and outlets that are in addition to the one free Drop* and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty *equipment.*

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 Institutional Network, And Public Educational And Governmental Access Or "PEG Access"

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 Technical Standards and Customer Service Practices.

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City *and written test reports shall be made available to the City upon request.* If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the *time, measured on a quarterly basis.*

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

   (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

   (ii) A problem established as having been non-Cable System or Cable Service in origin.

   A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

   (i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

   (a) Product and Services offered;

   (b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

   (c) Installation and service maintenance policies;

   (d) Instructions on how to use Services;

   (e) Channel positions of programming offered on a System; and

   (f) Billing and Complaint procedures, including the name, address and telephone number of the City.

   (ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

   (i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

   (ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

   (iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

   (iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

   (i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

   (a) The date after which the fee will be imposed if the balance is not paid; and

   (b) The amount of the fee that will be imposed; and

   (ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

   (i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

   (ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, ~~the~~ and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

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D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, *must begin by the next business day after* notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched,, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

   (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

   (ii) A problem established as having been non-Cable System or Cable Service in origin.

   A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair *commenced by a Grantee within the City during Normal Operating* Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. *A Grantee is permitted to refuse orders* for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

   (i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

   (a) Product and Services offered;

   (b) *Prices and options for programming Services* and conditions of subscription to programming and other Services and facilities.

   (c) Installation and service maintenance policies;

   (d) *Instructions on how to use Services;*

   (e) Channel positions of programming offered on a System; and

   (f) Billing and Complaint procedures, including the *name, address and telephone number of the City.*

   (ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, *or change of any kind imposed by any* government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

   (i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

   (ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

   (iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

   (iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

   (i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

   (a) The date after which the fee will be imposed if the balance is not paid; and

   (b) The amount of the fee that will be imposed; and

   (ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

   (i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

   (ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, ~~the~~ and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units *per cable mile, including areas annexed subsequent to the grant of* the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of *the Cable System in the City* shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that *Franchisee is required to develop and maintain* with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

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violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee, or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

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term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

   (i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

   (ii) For all other violations, $250 per day per violation.

   The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur, and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. ***Right of Appeal.***

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

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

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good

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ORDINANCE NO. 1893

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cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit Installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

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requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

Home Rule

ORDINANCE NO. 1892

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL

1.1 **Preservation of Police Power Authority.** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 **Defined Terms.** For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto .

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B..

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchises Non-Exclusive**. This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying **Communications Services** on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in **Exhibit A**. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No interference**. Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 **Additional Facilities Requirements; Planned Infrastructure.** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 **Franchisee Responsible for Costs.** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise**. Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities**. Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee:	The City:
Metromedia Fiber Network Services, Inc.	City of Leawood, Kansas
360 Hamilton Avenue	City Clerk
White Plains, NY 10601	4800 Town Center Drive
Attn:Vice President, Legal and regulatory Affairs	Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee's unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final

passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 16th day of April, 2001.

Approved by the Mayor the 16th day of April, 2001.

(SEAL)

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 **Title.** This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding

an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance,

indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. **"Capital Costs"** means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. **"Channel"** means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. **"City" or "Grantor"** means the City of Leawood, Kansas.

N. **"Exhibit B"** means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. **"Collocation"** means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. **"Communications"** means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. **"Communications Franchise"** means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. **"Communications Franchise Fee"** means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. **"Communications Service"** means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. **"Complaint"** means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. **"Converter"** means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. **"Direct Incremental Costs"** means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. **"Drop"** means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. **"Facilities"** means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. **"Franchise"** means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. **"Franchise Area,"** unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. **"Franchisee"** means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

BB. **"Grantee"** means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. **"Gross Receipts"** means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers

that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from

the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. **"Institutional Network" or "I-Net"** means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. **"Institutional Network Services"** means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated

voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. **"Institutional Users"** means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. **"Internet Access Service"** means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. **"Linear Foot"** means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. **"Normal Business Hours"** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. **"Normal Operating Conditions"** means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those

conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. **"Open Video Services"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. **"Provider"** means **Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..**

OO. **"Public Building"** means any building owned or for the greater part occupied by the City or other governmental unit.

PP. **"Renewal"** means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. **"Reseller Service Provider"** means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "**ROW Ordinance**" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter .

UU. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "**Telecommunications Service**" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "**Trained Representative**" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City

without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public

interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements

pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered . Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 ***Interest on Late Payments and Under Payments.*** *If any Communications* Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit

a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way . Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 Cable Franchise Requirements.

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such

violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a

legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a

Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one

hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor

fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service**. Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power**. Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. ***Status Monitoring***. Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion**. Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

   (i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

   (ii) A problem established as having been non-Cable System or Cable Service in origin.

   A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of

time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment .

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, ~~the~~ and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 Operation and Maintenance.

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate

compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the

term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the

City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully

remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

   (i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

   (ii) For all other violations, $250 per day per violation.

   The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur,

and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in

the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

A. **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Grantee shall be subject to the

rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or

replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good

cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of

Excess Conduit Installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all

other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORD1892

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The Legal Record
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(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1892--5/8/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 9, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$1,003.14

ORDINANCE NO. 1892

First published in The Legal Record, Tuesday, May 8, 2001.

ORDINANCE NO. 1892

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL

1.1 **Preservation of Police Power Authority.** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 **Defined Terms.** For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto.

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B..

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchise Non-Exclusive.** This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.3 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way *solely for the purposes of* supplying Communications Services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No Interference.** Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 **Additional Facilities Requirements; Planned Infrastructure.** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 **Franchisee Responsible for Costs.** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 *$ 1000 per month for the first mile of linear Facilities, or part thereof, plus $.21* per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City, provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between *wholly owned subsidiaries*, upon *thirty days prior notice to the City*. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said *City, or by any* other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the *lawfulness of this Franchise. This indemnification shall survive the expiration or termination of* this Franchise for a period of two (2) years after the effective date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee:	The City:
Metromedia Fiber Network Services, Inc.	City of Leawood, Kansas
360 Hamilton Avenue	City Clerk
White Plains, NY 10601	4800 Town Center Drive
Attn: Vice President, Legal and regulatory Affairs	Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee's unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. *Franchisee shall pay all publication costs.* Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the *franchise ordinance* shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 16th day of April, 2001.

Approved by the Mayor the 16th day of April, 2001.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 **Title.** This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, *including such changes in* applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered *into before or after enactment of this* Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

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provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding

an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area.**" unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers

that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from

the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated

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voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. **"Institutional Users"** means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. **"Internet Access Service"** means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. **"Linear Foot"** means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. **"Normal Business Hours"** means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. **"Normal Operating Conditions"** means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. **"Open Video Services"** means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. **"Person"** means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. **"Provider"** means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

OO. **"Public Building"** means any building owned or for the greater part occupied by the City or other governmental unit.

PP. **"Renewal"** means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. **"Reports"** means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. **"Reseller Service Provider"** means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. **"Rights-of-Way"** means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. **"ROW Ordinance"** means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. **"Service Interruption"** means the loss of picture or sound on one or more Channels on the Cable System.

VV. **"Standard Installation"** means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. **"Subscriber"** means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. **"System"** means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. **"Telecommunications Act"** means the Telecommunications Act of 1996 codified at Title 47 of the United States Code.

AAA. **"Telecommunications Service"** means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. **"Trained Representative"** means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City [illegible] otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchisee shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such amounts as established by the Governing Body annually, but not less $1000 per month; provided that nothing herein shall preclud Governing Body from eliminating the Gross Receipts requirements f use of the Rights-of-Way for one or more antennae where methodology would otherwise result in unfair or unreaso compensation.

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2.11 **Timing of Payment of Communications Franchise Fees.** Unless other agreed to in writing, all Communications Franchise Fees shall be due and pay on a monthly basis within 60 calendar days of the close of each month for w the payment applies (the "due date").

2.12 **Interest on Late Payments and Under Payments.** If any Communica Franchise Fee, or any portion thereof, is not postmarked or delivered on or be the due date, interest thereon shall accrue from the due date until received, a rate of one and one-half percent per month, unless such other maximum ra established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall accompanied by a statement showing the manner in which the Communicat Franchise Fee was calculated. If any Fee Statement is determined to under the Fee owed, then such additional amount owed shall be made with a corre statement, including interest on said amount as provided herein. Within calendar days following the end of the calendar year, each Franchisee shall sub a statement, certified as true, setting forth its Gross Receipts, Linear Foot, number of Antennae for each month of the preceding calendar year, describing what revenues or receipts (including each type of services) included and excluded in the fee calculations for the calendar year, and descri any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt payment, no acceptance by the City of any Communications Franchise Fee be construed as an accord that the amount paid is in fact the correct amount, shall acceptance of any Communications Franchise Fee payment be construe a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accu books of account and records of the business, ownership, and operations of Franchisee with respect to the System in a manner that allows the City determine whether the Franchisee has properly calculated its Communicati Franchise Fee in compliance with this Ordinance. Should the City reason determine that the records are not being maintained in such manner, Franchisee and City shall mutually agree on a method to correct the manne which the books and/or records are maintained so that the Franchisee comes compliance with this section. All financial books and records which maintained in accordance with FCC regulations and the regulations of governmental entity that regulates utilities in Kansas, and generally accep accounting principles shall be deemed to be acceptable under this section. S books and records shall be maintained for a period of at least three years. T maintenance of such records and the provision of such information as requi herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have right to inspect, examine or audit, during normal business hours and up reasonable notice, (ordinarily not less than two business days), all documen records or other information that pertains to the System and/or Franchise Communications Franchise Fee obligations under the Franchise. In addition access to the records of Franchisee for audits, upon at least two (2) business' da notice, Franchisee shall provide reasonable access to records necessary to veri compliance with the terms of the Franchise. If any audit or review by the Ci results in a determination by the City that Franchisee has underpaid any amou due by more than five (5%) percent of the total due, Franchisee shall, in additi to other amounts due, shall also pay any audit costs incurred by the City determining or identifying such underpayment.

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2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees a impositions otherwise applicable that are or may be imposed by the City. T Communications Franchise Fee is compensation for use of the Rights-of-Way Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying a Communications of any Reseller Service Provider through Franchisee's Facilitie Franchisee shall notify the City of the name and address of such Reseller Servic Provider, the reseller rates or tariffs to be paid to Franchisee relating to suc Reseller, and provide to the City a statement as to whether the Reseller Servic Provider will be obtaining a separate Franchise with the City to directly pa Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to b Subject to Franchise.** Prior to providing service within the City or transmittin communications through Facilities in the City, a Reseller Service Provider shal provide written notice to the City of the intent to do so, and shall include (1) th certification of the applicable regulatory approval necessary to undertake suc service or communications (2) the name of the Provider(s) owning the Facilitie within the City through which the Communications shall be transmitted. It shal be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications fo commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law o Franchise, Franchisee shall not lease, sell, or otherwise transfer possession o control of the Facilities, or any portion thereof, for any purpose to any person tha has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased o transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Servic Provider however nominated, provided that no possessory or tangible property interest o any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

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voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "**Institutional Users**" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Intranet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "**Open Video Services**" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "**Provider**" means **Metromedia Fiber Network Services, Inc.** and its agents, officers, and assigns.

OO. "**Public Building**" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "**Renewal**" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "**Reseller Service Provider**" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "**Rights-of-Way**" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "**ROW Ordinance**" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "**Telecommunications Service**" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "**Trained Representative**" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way. Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

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provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding

an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way. .

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area**," unless otherwise specified in the applicable Fra as provided for in 3.4.J., means the entire geographic area within t as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means Metromedia Fiber Network Services, Inc. a agents, officers, and assigns.

BB. "**Grantee**" means a Person who is granted a Cable Franchise and th Person's agents, employees, lawful successors, transferees, or assigne any other Person who constructs, operates or maintains Cable Facilit provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly Franchisee or its Affiliates for Communications Services origin terminating or otherwise rendered within the City and all revenue de from the use of the Communications Services Facilities. Except t extent as may be prohibited by law, such "Gross Receipts" specifically include, but shall not be limited to, all revenue o Franchisee derived from the following:

1. Recurring local exchange service revenues for business residence which include basic telephone exchange service, T Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-p and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services reve provided that such revenues derive from a system having anten or other parts of the mobile system are physically located wit the Right-of-Way; Rights-of-Way and the City is leg authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall inch customer service for installation of lines, reconnection of serv and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Serv Providers (except for revenues from Reseller Service Provid

that have a separate enforceable Franchise with the City prov for payment of Gross Receipts of that Reseller Service Provid

10. Revenue from Internet Access Service (and including C Internet Service, unless such service revenues are validly req to be included and are collected as Gross Revenues in a C Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of Facilities, network elements, or a portion thereof for any pur provided, however, that this shall not apply to the sale or tra of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, federal, state or local taxes separately stated on a customer's bill franchise fees. "Gross Receipts" shall not include revenues f Affiliates where the Affiliates have a separate enforceable Franchise the City providing for payment of such Affiliate Gross Receipts or w the Affiliate does not utilize, transmit communications through, or con to any part of the Facilities. In the event a Franchisee receives reve for Communications Services or other activities within and without City of which the specific portion attributed to operations in the cannot be directly determined ("Unallocated Revenues"), "Gross Recei with respect to such revenues shall mean the portion thereof derived multiplying such revenues by a fraction, the numerator of which is Gross Receipts from the City and the denominator of which is the t revenues of Franchisee attributable from the area generating s Unallocated Revenues. All revenue from or relating to or connected w Communication Services deriving from any billing address within the C shall be presumed to be Gross Receipts of Franchisee, un demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee by any other entity that is a Cable Operator on a Grantee's Cable Sys including the Grantee's Affiliates, from the operation of the Grant Cable System to provide Cable Services. By way of illustration and limitation, this definition would include to the extent permitted by revenue derived from pay cable fees, installation and reconnection fe leased channel access fees; Converter rentals; revenue from Cable Inter Service (if it is not required to be included in the Gross Receipts o separate binding Communications Franchise with the City as prescribed this Exhibit B); commissions from home shopping channels to the ext conducted through a Cable Service; all Cable Service lease payments fr

the Cable System; payments or other consideration received by Grantee from programmers ,except as provided herein, that is accou for as revenue under generally accepted accounting principles ("GAA advertising revenues; revenues from data transmissions to the extent t transmissions are considered Cable Services under federal law; paym or other consideration received by the Grantee for the use of the C System to provide Cable Service and accounted for as revenue u GAAP. Revenues which are not directly attributable to specific C Subscribers, including, but not limited to, leased access fees, adverti revenues, and home shopping commissions, shall be allocated among franchising jurisdictions served by the Grantee's Cable System on a Subscriber or other equitable basis measured in a consistent manner f period to period. Gross Revenues shall not include (i) to the ex consistent with GAAP, bad debt; provided, however, that all or part of such bad debt that is written off but subsequently collected shall included in Gross Revenues in the period collected; (ii) amounts colle from Cable Subscribers for public, educational and governmental acc provided, however, this exclusion does not limit a Grantee's ability to through franchise related costs to the extent allowed by applicable law (iii) any taxes on Cable Services furnished by Grantee which are impo directly upon any Subscriber or user by the State, City or o governmental unit and which are collected by Grantee on behalf of governmental unit, or (iv) Cable Franchise Fees collected from C Subscribers; or (v) payments or other consideration received by the C Franchisee from programmers for carriage of programming on the C System to the extent that such Cable Franchisee's books and rec indicate that all such payments are utilized for advertising of pu interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication netw which is constructed or operated by Grantee and which is gener available only to Cable Subscribers who are not residential Subscrib As may be required in the applicable Cable Franchise, the I-Net consist of capacity, fibers or both, from both within the primary c network and/or separately constructed networks that may be dedicate governmental, educational and other publicly funded users for two-w broadband communications. The I-Net includes all equipment maintenance of equipment required to make the capacity availa including, but not limited to, fiber and coaxial cable, cable mode switching, routing, transmitting and receiving necessary for the use of network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net b Cable System operator to governmental, educational and othe Institutional Users pursuant to the terms of its Franchise for n commercial applications including, but not limited to, two-way dedica

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commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

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B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; an

(ii) The Fee for the delinquent payment shall not excee percent (5%) of the amount of the delinquent balan month or five dollars ($5) per month, whichever is gre

4. **Refunds.** Refund checks will be issued promptly, but no late either:

(i) The Subscriber's next billing cycle following resoluti the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 5 seq., every Grantee shall prepare and maintain written recor Complaints made to them and the resolution of such Compl including the date of such resolution. For purposes of this requireme Complaints that result in the dispatch of a service technician sh individually logged and for all other Complaints the Cable Franchise satisfy this requirement by the creation of a written summary of the of Complaint and their resolution. Such Complaint logs and summ shall be on file at the office of Grantee, the and available for inspecti the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subs upon request a "lockout" device for blocking both video and portions of any channel(s) of programming entering the Subsc premises. Such device shall be provided at a reasonable charge, exc the extent that federal law specifically provides otherwise. A Grantee however, require a reasonable security deposit for the use of such a d

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its System to a particular area of the City or provision of cable S to individual or groups of residents on the basis of race, religion or economic condition. A Grantee shall serve all ar the City with populations of at least twenty-five (25) dwelling per cable mile, including areas annexed subsequent to the gr the Franchise, unless otherwise provided by Franchise ordi Such line extension requirements may be modified in a Fran such as where an franchise is granted to a prior existing operator located in area annexed subsequent to the adoption Exhibit B, or such other circumstances that are sufficiently u as determined by the Governing Body as not to create an competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall ext System and make Service available at regular installati regular monthly charges upon request to any contiguous designated for initial Service in the plan when p Subscribers can be served by extension of the Syste occupied dwelling units equivalent to twenty-five (25) more per cable mile. Such extension shall be at the Grantee Where aerial extension is allowed by regulation but under installation is requested by benefited Subscribers, the undergrounding that exceeds estimated aerial extension co be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory ex of the Cable System is required for areas newly annexed a effective date of the Franchise, but the technical capabilities then-existing Cable System are such that the minimum te performance standards required by this Franchise or the cannot be met, then the Grantee shall be required to mak extension only if the Grantee can earn a fair return (as measu the Grantee's weighted average cost of capital) on the incre investment required combined with the overall investment b the Cable System within the boundaries of the Franchise Are

4. **Special Agreements.** Nothing herein shall be construed to p a Grantee from serving areas not covered under this section agreement with developers, property owners or residents.

K. **Customer Service Reporting Requirements.** The City may require reasonable request that a Grantee periodically prepare and furnish to semi-annual reports and any other reasonable information relevant Grantee's compliance with the customer Service requirements o Chapter measured on a quarterly basis.

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the with respect to City's administration of this Chapter and Exhibit B an applicable Franchise granted pursuant to it. Subject to the pr provisions of the Cable Act, City shall have the right to inspect, upon (3) business days notice, during Normal Business Hours, all b records, maps, plans, financial statements, service complaint performance test results, and other existing like materials of a Grantee relate to the operation of the Grantee's Cable System and that reasonably necessary to Grantor's enforcement or administration of Exhibit B or the Grantee's Franchise. A Grantee shall not be require maintain any books or records for franchise compliance purposes lo than three (3) years, except that financial records necessary to demons

compliance with the required Cable Franchise Fee payments shall be for six (6) years. Upon request, the City will treat designated informa disclosed by a Grantee as confidential to the extent permissible under and federal law. All such review of a Grantee's books and records shal performed by an independent party if the City itself enters into business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petiti applications, communications, and reports submitted by a Grantee to FCC, Securities and Exchange Commission, or any other federal or s regulatory commission or agency which directly relate to the operation the Cable System in the City shall be made available contemporaneou to the City upon request. Copies of responses from the above regulat agencies to a Grantee likewise shall be made available promptly to City upon request. If the City is specifically named in any such plead or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within nin (90) days of the end of each of the applicable Grantee's fiscal ye during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of Grantee showing the Gross Revenues of the Grantee for preceding fiscal year;

(ii) A current list of names and addresses of each officer director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grante Cable System that were filed with any federal, State, local agencies during the preceding fiscal year and th were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices charges;

(v) A copy, if any, of the Grantee's current Subscriber Servi contract; and

(vi) A copy of Annual Reports to stockholders, if any, operating company and parent company.

(vii) An index of all technical and operational reports th Franchisee is required to develop and maintain with respe to its Cable System pursuant to this Exhibit B, individu Cable Franchise and the FCC.

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B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently-located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

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3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, the and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

(ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices and charges;

(v) A copy, if any, of the Grantee's current Subscriber Service contract; and

(vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

(vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, not shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competitor Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests constructi weather permitting and subject to payment of the Dir Incremental Costs of installation in excess of two hundred (2 feet. Drops and outlets that are in addition to the one free D and outlet required by this Section shall be provided by a Gran at the cost of Grantee's Direct Incremental Cost. Alternatively, an institution's request, the institution may add outlets at its o expense; as long as such installation meets the Grantee's standar which shall be made readily available to any public entity up request. Additional outlets and Services to Public Buildings subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commerc purposes. The City shall take reasonable precautions to prev any use of a Grantee's Cable System in any inappropriate man or that may result in loss or damage to the Cable System. Users such outlets shall hold the Grantee harmless from any and liability or claims arising out of their use of such outlets, other th for those claims arising out of improper installation or fau equipment.

3. In instances where the Drop line from the feeder cable to t Public Building, school or library exceeds 200 feet, the Grant may charge for its Direct Incremental Costs that are incurred exceeding this length. A Cable Franchisee may require advan payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in t applicable Franchise, upon activation and commercial offering of two-w cable modem service within the Franchise Area, every Grantee sh provide upon written request a courtesy cable modem and Cable Inter Service without charge to every State accredited K-12 school and libra in the Franchise Area, which may constitute an element of an individu Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicab Cable Franchise, and subject to any applicable state or federal regulatio the City shall have the right to install and maintain, free of charge, up the poles and within the underground pipes and conduits of a Grantee, a wires and fixtures desired by the City for public purposes. Provide however, that (a) such use by Grantor does not unreasonably interfere wi the current or future use by Grantee; (b) such use by Grantor is restrict to non-commercial public purposes; and (c) Grantor takes reasonab precautions to prevent any use of Grantee's facilities in any manner th results in an inappropriate use thereof, or any loss or damage to the Cab System. For the purposes of this subsection, "public purposes" include but is not limited to, the use of the structures and installations for Grant fire, police, traffic, utility, lighting, and/or signal systems, but not Cable System purposes in competition with the Grantee. The Grantee sh not deduct the value of such use of its Facilities from its Cable Franch Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable Sys (herein referred to as the "System Upgrade"), if required, as set forth in respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provi the System capabilities to comply with the FCC's Emergency Al System rules and regulations. Provided, that at a minimum th capabilities will remain in place even if the FCC at some future d eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide fo "periodic review" between the City and a Grantee to evaluate changes law, technology, or service, and reasonable procedures for mutua agreed upon modifications to the Franchise to incorporate chang identified as desirable or necessary as a result of any such periodic revie

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee w make audio descriptive service and closed captioning capabilities availa to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the Syste the Grantee shall provide standby power backup service capacity capa of providing at least twelve (12) hours of emergency supply at the Ca System Headend. For nodes, two hours with emergency power supp Every Grantee shall maintain standby power System supplies througho the major trunk cable networks capable of providing emergency pow within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic sta monitoring System, or a functional equivalent, when the Cable System h been activated for interactive service provided that such status monitori is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definiti Television/Advanced Television (HDTV/ATV) formats shall occur accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Acce Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise a subject to applicable law, provide or fund on a similar basis wi other Cable Providers whose Franchises are granted or renew after the adoption of this Exhibit B an Institutional Network, PEG Access Facilities or other public interest services, or som combination of the same, for use by governmental, educational a other publicly-funded or non-profit local community servi organizations identified by the City. Such public intere requirements shall at a minimum satisfy the community need f such facilities and/or services as determined by the Governi Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwid capacity, service, and funding, for separate Public, Educational a Government Access Channels, as specified in their Franchise. A such PEG Access Channels shall be available to all Subscribers part of their Basic Cable Service. Given the on-going changes the state of technology as of the Effective Date of this Exhibit absent the express written consent of the City, Grantee sha transmit PEG Access Channels in the format or technology utiliz to transmit all of the Channels on the Basic Cable Service tie Oversight and administration of the PEG Access Channels shall b set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on th Access Channels, proof of performance testing throughout the System an on all Channels will be made available to the City to the extent required a Franchise. Every Grantee will monitor Access Channels throughout th Cable System to determine the level of technical quality of Acces Channels is in conformance with FCC Rules and to ensure that the level o technical quality on such Access Channels is the same as on othe Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards an establishes customer service practices that every Grantee mu satisfy.

2. Every Grantee shall maintain such equipment and keep suc records as required to comply with all customer service an technical standards required by these regulations and othe applicable laws. The Grantee shall at all times assist and cooperat with Grantor in explaining, interpreting and understanding suc records or reports.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

(i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

(ii) For all other violations, $250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur, and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

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

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plan or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No Interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public rights-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or

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replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennas, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORDINANCE NO. 1009

First published in The Legal Record, Tuesday, May 8, 2001.

ORDINANCE NO. 1009

AN ORDINANCE AMENDING ORDINANCE NO. 981 AMENDING CHAPTER 1, ARTICLE 7. PERSONNEL REGULATIONS AND PROCEDURES, SECTION 1-702, SUBPART "B", WITH RESPECT TO FULL-TIME EMPLOYEES OF THE CODE OF THE CITY OF MISSION, KANSAS.

BE IT ORDAINED by the governing body of the City of Mission, Kansas as follows:

SECTION ONE: The Code of the City of Mission, Kansas, Article 7, Personnel Regulations and Procedures, Section 1-702, subpart (b). Full-time Employees, item 3 (B), is hereby amended as follows;

1-702 (b) Full-time Employees. The following schedule shall govern the salaries of full-time employees and wages of part-time employees as established by the governing body. The salary or wages of all employees shall be as determined by the mayor and the department heads, subject to the approval of the governing body. The governing body within the limits hereinafter prescribed shall determine the salary of each department head.

(3) Police Department
(B) Captain of Police - $35,000 to a maximum of $65,000/year.

PASSED AND APPROVED BY THE GOVERNING BODY this 25th day of April 2001.

SIGNED AND APPROVED BY THE MAYOR this 25th day of April 2001.

Sylvester Powell, Jr., Mayor

ATTEST:

Sue A. Grosdidier, City Clerk

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, May 8, 2001.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the *Lenexa Planning Commission* will hold a *Public Hearing* on Monday, June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenexa City Hall, 12350 West 87th Street Parkway.

At said Hearing, all interested parties will be heard to consider the advisability of adopting an erosion and sedimentation control ordinance, which establishes substantive and procedural requirements to protect and enhance the water quality by controlling erosion, sedimentation and related environmental damage caused by construction related or other soil disturbing activities.

All persons interested are invited to appear and be heard at the time and date above stated.

This ordinance proposal was filed by the City of Lenexa, Kansas.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

Publication Date: May 8, 2001

Planning Commission Meeting Date: June 4, 2001

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, May 8, 2001.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a Public Hearing on June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenexa City Hall, 12350 West 87th Street Parkway.

At said Hearing, all interested parties will be heard to consider the advisability of adopting revisions to the following code section(s):

4-1-B-24-F-15 Wireless Communications Antennas

All persons interested are invited to appear and be heard at the time and date above stated.

This ordinance proposal was filed by the City of Lenexa, Kansas.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

Publication Date: May 8, 2001

Planning Commission Meeting Date: June 4, 2001

replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its usable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

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CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1892--5/8/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 9, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$1,003.14

ORDINANCE NO. 1892

First published in The Legal Record, Tuesday, May 8, 2001.

ORDINANCE NO. 1892

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the *Home Rule Amendment* to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of *Rights-of-Way* for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the *Rights-of-Way* by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission's duties and jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. GENERAL.

1.1 **Preservation of Police Power Authority.** Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 **Defined Terms.** For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto.

1.3 **Franchise Subject to Provisions of Exhibit B.** This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B..

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 **Franchises Non-Exclusive.** This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.

2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of *Rights-of-Way*. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the *Rights-of-Way* authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No Interference.** Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. *Franchisee shall further* make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.

2.6 **Additional Facilities Requirements; Planned Infrastructure.** When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee's conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 **Franchisee Responsible for Costs.** The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 **Compensation.** Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per month for the first mile of linear Facilities, or part thereof, plus 3.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.

4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction commonly known as an "initial public offering" without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise, setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.

SECTION 7. GENERAL CONDITIONS

7.1 **Compliance With Laws.** In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 **Relationship of the Parties.** Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 **Relocation or Removal of Facilities.** Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

7.5 **No Cause of Action Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise herein with Franchisee; provided further that the Franchisee acknowledges by its acceptance of said Franchise that it has not been induced to enter into this Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Franchisee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.

SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee:	The City:
Metromedia Fiber Network Services, Inc.	City of Leawood, Kansas
360 Hamilton Avenue	City Clerk
White Plains, NY 10601	4800 Town Center Drive
Atta: Vice President, Legal and regulatory Affairs	Leawood, KS 66211

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City's Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee's unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee's acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 16th day of April, 2001.

Approved by the Mayor the 16th day of April, 2001.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.

EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 **Declaration of Findings.** The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 **Title.** This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 **Applicability.** The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

CONTINUED ON NEXT PAGE

HANRAHAN ESTATE
First published in The Legal Record, Tuesday, May 1, 2001.
NOTICE TO CREDITORS
Estate of Thomas M. Hanrahan
To all persons interested in the estate of Thomas M. Hanrahan, decedent. **UMB Bank, N.A.** is acting as Trustee under a trust, the terms of which provide that the debts of the decedent may be paid by the Trustee upon receipt of proper proof thereof. The address of the Trustee is PO Box 4368, Overland Park, KS 66204-0368 Attn: Cheryl Wells, Trust Administrator.
All creditors of the decedent are notified to present their claims to the undersigned within four (4) months from the date of the first publication of this notice or be forever barred.
UMB Bank, N.A.
Trustee
By: /s/ Cheryl Wells, Trust Administrator
5/1 5/8 5/15

CHASE MANHATTAN MORTGAGE CORP. V. PEUSER, ET AL.
First published in The Legal Record, Tuesday, May 1, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT
Chase Manhattan Mortgage Corporation
Plaintiff,
vs.
Steven A. Peuser; Carla D. Peuser; John Doe (Tenant/Occupant); Mary Doe (Tenant/Occupant); Unknown,
Defendants.
Case No. 01CV2661
Court Number: 14
Pursuant to K.S.A. Chapter 60
NOTICE OF SUIT
THE STATE OF KANSAS, to the above-named defendants and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any deceased defendants; the unknown spouses of any defendants; the unknown officers, successors, trustees, creditors and assigns of any defendants that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of any defendants that are or were partners or in partnership; the unknown guardians, conservators and trustees of any defendants that are minors or are under any legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any person alleged to be deceased, and all other persons who are or may be concerned.
You are notified that a Petition has been filed in the District Court of Johnson County, Kansas, praying to foreclose a real estate mortgage on the following described real estate:
Lot 17, Block 3, replat of HUNTER'S CREEK FIRST PLAT, a subdivision in the City of Olathe, Johnson County, Kansas, commonly known as 12414 S. Parker Terr., Olathe, KS 66061 (the "Property")
and you are required to plead to the Petition on or before the 11th day of June, 2001, in the District Court of Johnson County, Kansas. If you fail to plead, judgment and decree will be entered in due course upon the Petition.
NOTICE
Pursuant to the Fair Debt Col-

NANNINGA ESTATE
First published in The Legal Record, Tuesday, May 1, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
PROBATE DIVISION
In the Matter of the Estate of LYNN NANNINGA, Deceased
Case No. 01PR133
Division M1
NOTICE OF HEARING AND NOTICE TO CREDITORS
The State of Kansas To All Persons Concerned:
You are hereby notified that on April 19, 2001, a Petition was filed in this Court by Brenda Nanninga Carroll, an heir, devisee and legatee, praying that the Will of Lynn Nanninga be admitted to probate and record, that she be appointed as executor without bond and that she be granted Letters Testamentary.
You are required to file your written defenses thereto on or before June 11th, 2001 at 3:30 p.m. of such day, in this Court, in the City of Olathe in Johnson County, Kansas, at which time and place the cause will be heard. Should you fail, judgment and decree will be entered in due course upon the Petition.
All creditors are notified to exhibit their demands against the estate within four months from the date of first publication of this Notice, as provided by law, and if their demands are not thus exhibited, they shall be forever barred.
Brenda Nanninga Carroll, Petitioner
Prepared and Submitted by:
HILL, BEAM-WARD & KRUSE, LLC
CHRISTOPHER T. WILSON, #15527
/s/ W. GREGORY WRIGHT #18352
8695 College Blvd., Ste. 200
Overland Park, Kansas 66210
(913) 339-6888
(913) 339-9653 (Fax)
ATTORNEYS FOR BRENDA NANNINGA CARROLL
5/1 5/8 5/15

WOLBERG ESTATE
First published in The Legal Record, Tuesday, May 1, 2001.
NOTICE TO CREDITORS TO SUBMIT CLAIMS
ESTATE OF HEIM WOLBERG
To all persons interested in the estate of HEIM WOLBERG, deceased:
The undersigned, ARTHUR LAPIN and RONALD K. WOLBERG, are acting as Trustees under a Trust Agreement dated September 4, 1998, the terms of which provide that the debts of the decedent may be paid by the Trustees upon receipt of proper proof thereof. The address of the Trustees is:
c/o Stanley M. Burnstein
SWANSON MIDGLEY, LLC
2420 Pershing Road, Suite 400
Kansas City, MO 64108-2505
All creditors of the decedent are notified to present their claims to the undersigned within six (6) months from the date of the first publication of this notice or be forever barred.
Published: 5/1/01, 5/8/01, 5/15/01.
ARTHUR LAPIN and RONALD K. WOLBERG, Trustees
5/1 5/8 5/15

CAMPBELL ESTATE
First published in The Legal Record, Tuesday, May 1, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
PROBATE DIVISION
IN THE MATTER OF THE ESTATE OF
JOHN R. CAMPBELL (Sr.), Deceased.
Estate No.: 01 PR 323
NOTICE TO CREDITORS
The State of Kansas To All Persons Concerned:
You are hereby notified that on April 26, 2001, a Petition for Probate of Will and Issuance of Letters Testamentary was filed in this Court by Rose Marie Campbell, an heir, devisee and legatee, and executor named in the Last Will and Testament of John R. Campbell, (Sr.), deceased. All creditors of the above named decedent are notified to exhibit their demands against the estate within four months from the date of first publication of this notice, as provided by law, and if their demands are not thus exhibited, they shall be forever barred.
Rose Marie Campbell, Petitioner
LOUGHLIN, JOHNSON & CAMPBELL
By /s/ JOHN R. CAMPBELL, JR., #19548
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111
(816) 756-3434
(816) 756-0373 - Fax
ATTORNEYS FOR PETITIONER
5/1 5/8 5/15

HANSELL ESTATE
First published in The Legal Record, Tuesday, May 1, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
PROBATE DIVISION
In the Matter of the Estate of ETHEL H. HANSELL Deceased.
Case No. 01PR-324
Division No. 2
NOTICE TO CREDITORS
The State of Kansas To All Persons Concerned:
You are hereby notified that on April 24, 2001, a Petition for Probate of Will and Issuance of Letters Testamentary was filed in this Court by UMB, as executor named in the Last Will and Testament of Ethel H. Hansell, deceased. All creditors of the above named estate are notified to exhibit their demands against the estate within four months from the date of first publication of this notice, as provided by law, and if their demands are not thus exhibited, they shall be forever barred.
UMB, Petitioner
SPEER, HOLLIDAY & VEATCH
By:
Michael K. Sears, 17153
201 North Cherry, P.O. Box 1000
Olathe, Kansas 66051-1000
Phone: (913) 782-1000 / FAX: (913) 782-0852
Clerk's Box No. 35
Attorneys for petitioner
5/1 5/8 5/15

JOHNSON NAME CHANGE
First published in The Legal Record, Tuesday, April 24, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT
In the Matter of the Application of GRIFFIN RAY JOHNSON to Change His Name.
Case No. 01CV02555, Division 17. Chapter. 60.
NOTICE OF SUIT
THE STATE OF KANSAS TO ALL PERSONS WHO ARE OR MAY BE CONCERNED:
You are hereby notified that a petition has been filed in the District Court of Johnson County, Kansas, by GRIFFIN RAY JOHNSON, praying for a change of name and you are hereby required to plead to said petition on or before June 1, 2001 at 8:45 o'clock A.M. in Division 17 in said court in Olathe, Kansas. Should you fail therein, judgment and decree will be entered in due course on said petition and the petitioner's name shall be changed to GRIFFIN DAVID NORDBY.
GRIFFIN RAY JOHNSON, Petitioner
Sandra Anne Grant #40346 (MO)
Suite 800 Bryant Building
1102 Grand, KCMO 64106
(816) 471-1060
fax (816) 471-1060
ATTORNEY FOR PETITIONER
4/24/ 5/1 5/8

HOUSEHOLD BANK V. HEFLEY, ET AL.
First published in The Legal Record, Tuesday, May 8, 2001.
IN THE DISTRICT COURT, JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT
HOUSEHOLD BANK, F.S.B.
Plaintiff,
vs.
KERRY J. HEFLEY, et al.
Defendants,
PURSUANT TO K.S.A. CHAPTER 60
CASE NO. 00 CV 7124
INVOLVES TITLE TO REAL ESTATE
NOTICE OF HEARING TO EXTINGUISH REDEMPTION
THE STATE OF KANSAS TO THE ABOVE NAMED AND DESCRIBED DEFENDANTS:
You are hereby notified that a motion has been filed in the District Court of Johnson County Kansas, by Household Bank, F.S.B., in the above captioned action, praying that the rights for redemption be extinguished pursuant to K.S.A. 60-2414(a). Hearing of the aforesaid motion will be heard on the 30th day of May, 2001 at 9:45 o'clock a.m., before the Honorable Gerald T. Elliott, Johnson County Courthouse, Olathe, Kansas. Should you fail appear therein at said time and place, an order extinguishing said redemption will be entered in due course upon said motion.
MELLOR & MILLER P.A.
P.O. Box 8153
Wichita, KS 67208-8153
(316) 684-7733
Attorneys for Plaintiff
5/8

FAY ESTATE
First published in The Legal Record, Tuesday, April 24, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
PROBATE SECTION
In the Matter of the Estate of CONNIE SUE FAY, Deceased.
No. 01PR300
Div. No. M1
Chapter 59
Notice to Creditors
THE STATE OF KANSAS TO ALL PERSONS CONCERNED:
You are hereby notified that on April 17, 2001, a Petition for Issuance of Letters of Administration was filed in this Court by Susan B. Fay, as an heir of Connie Sue Fay, Deceased.
All creditors are notified to exhibit their demands against the said estate within four (4) months from the date of the first publication of this notice as provided by law, and if their demands are not thus exhibited, they shall be forever barred.
Susan B. Fay, Petitioner
Jon W. Gilchrist - #13708
PAYNE & JONES, CHARTERED
College Blvd. at King
P.O. Box 25625
Overland Park, Kansas 66225
(913) 469-4100
ATTORNEYS FOR PETITIONER
4/24 5/1 5/8

YOU CAN SEND YOUR PUBLIC NOTICES TO US BY E-MAIL AT:
editor1@legal-record.com

FLEET MORTGAGE CORP. V. FRAKER, ET AL.
First published in The Legal Record, Tuesday, April 24, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT
Fleet Mortgage Corporation f/k/a Fleet Real Estate Funding Corporation
Plaintiff,
vs.
Jed M. Fraker; Debbie Jones-Fraker; John Doe (Tenant/Occupant); Mary Doe (Tenant/Occupant); First Federal Lincoln Bank,
Defendants.
Case No. 01CV01675
Pursuant to K.S.A. Chapter 60
NOTICE OF SUIT
THE STATE OF KANSAS, to the above-named defendants and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any deceased defendants; the unknown spouses of any defendants; the unknown officers, successors, trustees, creditors and assigns of any defendants that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors and assigns of any defendants that are or were partners or in partnership; the unknown guardians, conservators and trustees of any defendants that are minors or are under any legal disability; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of any person alleged to be deceased, and all other persons who are or may be concerned.
You are notified that an Answer and Cross-Claim Petition has been filed in the District Court of Johnson County, Kansas, by Defendant First Federal Lincoln Bank, praying to foreclose a real estate mortgage on the following described real estate:
Lot 8, Block 2, Summercrest, A Subdivision in the City of Overland Park, Johnson County, Kansas, commonly known as 11245 Lowell Ave., Overland Park, KS 66210 (the "Property")
and you are required to plead to the Answer and Cross-Claim Petition on or before the 4th day of June, 2001, in the District Court of Johnson County, Kansas. If you fail to plead, judgment and decree will be entered in due course upon the Answer and Cross-Claim Petition.
NOTICE
Pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692c(b), no information concerning the collection of this debt may be given without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction. The debt collector is attempting to collect a debt and any information obtained will be used for that purpose.
Michael Zevitz (KS Bar No. 14850, 40960)
SOUTH & ASSOCIATES, P.C.
4600 Madison, Suite 801
Kansas City, Missouri 64112
(816) 300-7800
ATTORNEYS FOR DEFENDANT FIRST FEDERAL LINCOLN BANK (20731)
4/24 5/1 5/8

HENNESSEY ESTATE
First published in The Le[illegible] Record, Tuesday, April [illegible] 2001.
IN THE DISTRICT COUR[illegible] OF JOHNSON COUNTY KANSAS
PROBATE DIVISION
In the Matter of the Estate o[illegible] BETTY MAE HENNESSE[illegible] Deceased.
Case No.: 01PR3[illegible]
Chapter [illegible]
Div. M[illegible]
NOTICE OF HEARING
THE STATE OF KANSAS T[illegible] ALL PERSONS CON[illegible] CERNED:
You are hereby notified that [illegible] petition has been filed on Ap[illegible] 18; 2001, in this court by Joh[illegible] P. Hennessey, the survivin[illegible] spouse and heir at law of Bett[illegible] Mae Hennessey, deceased [illegible] praying for the determination o[illegible] descent of the following de[illegible] scribed real estate in Johnso[illegible] County, Kansas, to-wit:
Lot 976, LEAWOOD, a subd[illegible] vision in the city of Leawoo[illegible] Johnson County, Kansas [illegible] according to the recorded pla[illegible] thereof.
Subject to easements, restric[illegible] tions, reservations, covenant[illegible] and special assessments no[illegible] of record, if any.
Commonly known as: 801[illegible] Weoga, Leawood, Kansas.
and all other property in Kan[illegible] sas, real and personal, or inter[illegible] ests therein, owned by the de[illegible] cedent at the time of her death [illegible]
You are hereby required to fil[illegible] your written defenses to such [illegible] petition on or before the 17th [illegible] day of May, 2001, at 4:30 o'cloc[illegible] p.m. of said day, in said court [illegible] in the city of Olathe in Johnso[illegible] County, Kansas, at which time [illegible] and place said cause will be [illegible] heard. Should you fail therein [illegible] judgment and decree will be [illegible] entered in due course upon [illegible] such petition.
John P. Hennessey, Petitione[illegible]
SUBMITTED BY:
BARNETT & JAMISON LAW [illegible] FIRM, CHARTERED
816 Ann Avenue
Kansas City, Kansas 66101
(913) 281-3500
Facsimile (913) 342-2016
/s/ Judith C. Hedrick #16261
Attorney for Petitioner
4/24 5/1 5/8

CREDIT DATA & PUBLIC RECORDS
EVERY WEEK IN THE LEGAL RECORD

PONCE DE LEON NAME CHANGE
First published in The Legal Record, Tuesday, April 24, 2001.
IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
In the Matter of the Name Change of:
ANTHONY ROBERT PONCE DE LEON,
by and through his next friend,
Cynthia R. Dyche.
Case No. 01CV02505
Division No. 4
Pursuant To K.S.A. 60
NOTICE OF SUIT
The State of Kansas to Cesar Ponce DeLeon and All Persons Concerned:
You are hereby notified that a petition for change of name has been filed in the District Court of Johnson County, Kansas, by Cynthia Dyche, as next friend of Anthony Robert DeLeon, praying for judgment and decree changing his name to Anthony Robert Bator. You are required to file your written objections to the petition on or before the 8th day of June, 2001, in the District Court at Olathe, Johnson County, Kansas. If you fail to plead, judgment and decree will be entered in due course upon the petition.
Kenneth Chambers I.D. #9781
1002 Gateway Tower Two
400 State Avenue
Kansas City, Kansas 66101
(816) 781-7791
Attorney for Petitioners
4/24 5/1 5/8

MACHLITT ADOPTION
First published in The Legal Record, Tuesday, April 24, 2001.
In the matter of the adoption of Baby Boy Machlitt, in the District Court of Johnson County, Kansas, Probate Division, Division Two in the matter of the adoption of Baby Boy Machlitt, a minor child, case #01AD54.
Notice of hearing on petition to terminate parental rights.
To: All unknown possible punitive fathers of Baby Boy Machlitt, a minor child born to Crystle G. Machlitt on the 8th day of March, 2001 at 3:47 p.m. at Stormont Vail Hospital of Topeka, Shawnee County, Kansas, and to all other persons who may be concerned: You are hereby notified that a petition for termination of your parental rights has been filed in Johnson County District Court by Adoption of Babies and Children, Inc., a Kansas licensed child placing agency praying that your rights be forever severed from Baby Boy Machlitt, a minor child being born on the 8th day of March, 2001 at 3:47 p.m. to Crystle G. Machlitt, the natural mother. You are hereby required to plead to the petition on or before the 21st day of May, 2001 at 9:30 a.m. in Johnson County District Court, Division Two in the state of Kansas, city of Olathe. If you fail to plead, judgment & decree will be entered in due course upon the petition and your parental rights with regard to Baby Boy Machlitt will be forever severed and terminated.
Respectfully Submitted,
Jennifer M. Agee, 9230 Pflumm Road, Lenexa, Kansas 66215, 913-894-2223.
4/24 5/1 5/8

Sales Tax Revenues Down – People Not Buying

CONTINUED FROM PAGE 1

[illegible]n yield in [illegible] bushels per [illegible] to 30 bush-[illegible]

[illegible]ose to pay-[illegible]aid.

[illegible]nent store, [illegible]e economy [illegible]y many of [illegible]

[illegible] they have [illegible]e than the [illegible] year," he [illegible]iting until the last minute to repair anything."

Gee said the story is much the same among many other merchants.

"Across the board, sales are down. I don't think any of them are doing wonderfully," Gee said. "People aren't buying."

Beyond the bad crop year, Gee also blames the harsh winter that struck northwest Kansas and higher-than-expected heating bills.

"We had so much snow that it kept people from shopping, and many businesses had to shut down a few days or close early," Gee said.

CONTINUED FROM PRECEDING PAGE

provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

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

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City**" or "**Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area**," unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

BB. "**Grantee**" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; payments or other consideration received by the Grantee from programmers ,except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent those transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extens allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or, (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "**Institutional Network Services**" means the provision of an I-Net by a Cable System operator to governmental, educational and other , Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated

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voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "Institutional Users" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "Internet Access Service" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "Linear Foot" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. : Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "Normal Operating Conditions" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "Open Video Services" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "Person" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "Provider" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

OO. "Public Building" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "Renewal" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "Reports" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "Reseller Service Provider" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "Rights-of-Way" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "ROW Ordinance" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "Service Interruption" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "Standard Installation" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "Subscriber" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "System" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "Telecommunications Act" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "Trained Representative" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 Unlawful to Operate Without a Franchise. It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 Franchises Nonexclusive. The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 Nature of Rights Granted by any Franchise. Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 Application and Application Fee Required. Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 Standards and Procedures for Approval or Renewal of Franchises. Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 Cable Service and Open Video Systems (OVS); Separate Franchise Required. A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate. The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 Term. A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 Communications Franchise Fees. Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such amounts as established by the Governing Body annually, but not les[s] $1000 per month; provided that nothing herein shall preclud[e] Governing Body from eliminating the Gross Receipts requirements f[or] use of the Rights-of-Way for one or more antennas where methodology would otherwise result in unfair or unreas[onable] compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed d[uring] the first two months after the use of the Rights-of-Way have been authoriz[ed by] the City, unless another term is warranted under the circumstances and cons[istent] with applicable law.

2.10 Bundled Services. To the extent Franchisee markets "bundled" serv[ices] including combinations of services that may be subject to a Communica[tions] Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the Ci[ty] appropriate and reasonable division of services among the various ser[vices] offered. Revenues from the sale of such bundled services shall be apporti[oned] for purposes of the Franchisee in such manner that an amount equal t[o] Franchisee's usual and customary charge for Communications Service alone [shall] be included in "Gross Receipts;" provided, however, if a Franchisee discoun[ts] cost or otherwise receives reduced revenue from the sale of such bundled ser[vices] the amount attributable to "Gross Receipts" shall be reduced on a pro rata [basis] equal to the percentage difference between the costs for the bundled [and] unbundled service components. Whether or not Franchisee separates service[s on] a Subscriber's bill, it will provide to the City the amounts upon which it will [pay] the Communications Franchise Fee and any applicable taxes or fees based o[n the] provision of Communications Service, and the amounts upon which it will pa[y the] Fee.

2.11 Timing of Payment of Communications Franchise Fees. Unless other[wise] agreed to in writing, all Communications Franchise Fees shall be due and pay[able] on a monthly basis within 60 calendar days of the close of each month for w[hich] the payment applies (the "due date").

2.12 Interest on Late Payments and Under Payments. If any Communicat[ions] Franchise Fee, or any portion thereof, is not postmarked or delivered on or be[fore] the due date, interest thereon shall accrue from the due date until received, a[t the] rate of one and one-half percent per month, unless such other maximum ra[te is] established by Law.

2.13 Fee Statement. : Each Communications Franchise Fee payment shall [be] accompanied by a statement showing the manner in which the Communicat[ions] Franchise Fee was calculated. If any Fee Statement is determined to under[state] the Fee owed, then such additional amount owed shall be made with a corre[cted] statement, including interest on said amount as provided herein. Withi[n ...] calendar days following the end of the calendar year, each Franchisee shall su[bmit] a statement, certified as true, setting forth its Gross Receipts, Linear Foot, [and] number of Antennae for each month of the preceding calendar year, [...] describing what revenues or receipts (including each type of services) [...] included and excluded in the fee calculations for the calendar year, and descri[bing] any adjustments made in determining the Communications Franchise Fee.

2.14 No Accord and Satisfaction. For a period of five (5) years after receipt [of] payment, no acceptance by the City of any Communications Franchise Fee [shall] be construed as an accord that the amount paid is in fact the correct amount, [nor] shall acceptance of any Communications Franchise Fee payment be construe[d as] a release of any claim of the City.

2.15 Maintain Records. Franchisee shall at all times maintain complete and accu[rate] books of account and records of the business, ownership, and operations of [the] Franchisee with respect to the System in a manner that allows the City [to] determine whether the Franchisee has properly calculated its Communicat[ions] Franchise Fee in compliance with this Ordinance. Should the City reason[ably] determine that the records are not being maintained in such manner, [the] Franchisee and City shall mutually agree on a method to correct the manne[r in] which the books and/or records are maintained so that the Franchisee comes [into] compliance with this section. All financial books and records which [are] maintained in accordance with FCC regulations and the regulations of [any] governmental entity that regulates utilities in Kansas, and generally accep[ted] accounting principles shall be deemed to be acceptable under this section. S[uch] books and records shall be maintained for a period of at least three years. [The] maintenance of such records and the provision of such information as requi[red] herein shall be a material term of this Franchise.

2.16 Right of Inspection. The City or its designated representatives shall have [the] right to inspect, examine or audit, during normal business hours and up[on] reasonable notice, (ordinarily not less than two business days), all documen[ts,] records or other information that pertains to the System and/or Franchise[e's] Communications Franchise Fee obligations under the Franchise. In addition [to] access to the records of Franchisee for audits, upon at least two (2) business' da[ys] notice, Franchisee shall provide reasonable access to records necessary to veri[fy] compliance with the terms of the Franchise. If any audit or review by the Ci[ty] results in a determination by the City that Franchisee has underpaid any amou[nt] due by more than five (5%) percent of the total due, Franchisee shall, in additi[on] to other amounts due, shall also pay any audit costs incurred by the City [in] determining or identifying such underpayment.

2.17 Description of Service. Franchisee shall on an annual basis provide the City wi[th] a description of new local communications services offered within the City durin[g] the prior year. The first annual report shall also provide a listing of each separa[te] type of service or bundled service offered during the initial annual period. An[y] individual or bundled service or item for which the provider has a separate charg[e] shall be considered a separate service under this paragraph.

2.18 Payment of Taxes. The Communications Franchise Fees required herein shall [be] in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees a[nd] impositions otherwise applicable that are or may be imposed by the City. T[he] Communications Franchise Fee is compensation for use of the Rights-of-Wa[y.] Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 Duty to Notify City of Resellers. Within 30 days of the Franchisee carrying a[ny] Communications of any Reseller Service Provider through Franchisee's Faciliti[es,] Franchisee shall notify the City of the name and address of such Reseller Servi[ce] Provider, the reseller rates or tariffs to be paid to Franchisee relating to su[ch] Reseller, and provide to the City a statement as to whether the Reseller Servi[ce] Provider will be obtaining a separate Franchise with the City to directly pa[y] Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 Duty of Reseller to Provide Notice of Operation Within City; Facilities to b[e] Subject to Franchise. Prior to providing service within the City or transmittin[g] communications through Facilities in the City, a Reseller Service Provider sha[ll] provide written notice to the City of the intent to do so, and shall include (1) th[e] certification of the applicable regulatory approval necessary to undertake suc[h] service or communications (2) the name of the Provider(s) owning the Facilitie[s] within the City through which the Communications shall be transmitted. It sha[ll] be unlawful for any Provider or Reseller Service Provider not having its ow[n] Franchise authorizing such communications to transmit communications fo[r] commercial purposes through any Facility owned by a Provider that does not hav[e] a valid franchise with the City authorizing the use of such Facilities.

2.21 Sale or Lease of Facilities. Except as otherwise may be provided by Law o[r] Franchise, Franchisee shall not lease, sell, or otherwise transfer possession o[r] control of the Facilities, or any portion thereof, for any purpose to any person tha[t] has not obtained a duly issued Franchise, or other grant by the City to use th[e] Rights-of-Way and which includes the authority to use or maintain such leased o[r] transferred Facilities. This subsection shall not be construed to apply to Franchise[e] offering or providing its capacity or spectrum on the System to a Reseller Servic[e] Provider however nominated, provided that no possessory or tangible property interest o[f] any kind in the Facilities is transferred. Franchisee shall provide the City reasonabl[e] prior notice of such intended sale, lease or transfer of possession or control.

2.22 Assignment of Franchise. The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

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voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "**Institutional Users**" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "**Internet Access Service**" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "**Linear Foot**" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "**Normal Business Hours**" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "**Normal Operating Conditions**" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "**Open Video Services**" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "**Person**" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "**Provider**" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns..

OO. "**Public Building**" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "**Renewal**" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "**Reports**" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "**Reseller Service Provider**" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "**Rights-of-Way**" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.

TT. "**ROW Ordinance**" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "**Service Interruption**" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "**Standard Installation**" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "**Subscriber**" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "**System**" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

ZZ. "**Telecommunications Act**" means the Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

AAA. "**Telecommunications Service**" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "**Trained Representative**" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 **Standards and Procedures for Approval or Renewal of Franchises.** Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 **Cable Service and Open Video Systems (OVS); Separate Franchise Required.** A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 **Term.** A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $_.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $ 10,000, and

B. $ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 **Bundled Services.** To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 **Interest on Late Payments and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 **Fee Statement.** Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee's Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business' days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.

2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way. Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction

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provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City's right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

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

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement

thereof by said City, or for the failure of said City to have the authority to grant all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

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

A. "**Access Facilities**" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "**Affiliate**" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding

an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "**Antenna**" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "**Basic Cable Service**" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

E. "**Cable Act**" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

F. "**Cable Franchise**" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "**Cable Franchise Fee**" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "**Cable Internet Services**" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "**Cable Services**" means:

1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and

2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

J. "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "**Capital Costs**" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "**Channel**" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "**City" or "Grantor**" means the City of Leawood, Kansas.

N. "**Exhibit B**" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "**Collocation**" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "**Communications**" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "**Communications Franchise**" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.

R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic , allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.

Z. "**Franchise Area.**" unless otherwise specified in the applicable Fr as provided for in 3.4.J., means the entire geographic area within t as it is now constituted or may in the future be constituted.

AA. "**Franchisee**" means Metromedia Fiber Network Services, Inc. agents, officers, and assigns..

BB. "**Grantee**" means a Person who is granted a Cable Franchise and th Person's agents, employees, lawful successors, transferees, or assign any other Person who constructs, operates or maintains Cable Facili provides Cable Services by use of the Rights-of-Way.

CC. "**Gross Receipts**" means all revenues received directly or indirect Franchisee or its Affiliates for Communications Services origi terminating or otherwise rendered within the City and all revenue d from the use of the Communications Services Facilities. Except extent as may be prohibited by law, such "Gross Receipts" specifically include, but shall not be limited to, all revenue Franchisee derived from the following:

1. Recurring local exchange service revenues for busines residence which include basic telephone exchange service, Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-p and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services reve provided that such revenues derive from a system having anten or other parts of the mobile system are physically located wi the Right-of-Way; Rights-of-Way and the City is leg authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall inclu customer service for installation of lines, reconnection of serv and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Servi Providers (except for revenues from Reseller Service Provide

that have a separate enforceable Franchise with the City provi for payment of Gross Receipts of that Reseller Service Provide

10. Revenue from Internet Access Service (and including C Internet Service, unless such service revenues are validly requ to be included and are collected as Gross Revenues in a C Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of Facilities, network elements, or a portion thereof for any pur provided, however, that this shall not apply to the sale or tran of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, federal, state or local taxes separately stated on a customer's bill franchise fees. "Gross Receipts" shall not include revenues fr Affiliates where the Affiliates have a separate enforceable Franchise w the City providing for payment of such Affiliate Gross Receipts or wh the Affiliate does not utilize, transmit communications through, or conn to any part of the Facilities. In the event a Franchisee receives revenu for Communications Services or other activities within and without t City of which the specific portion attributed to operations in the C cannot be directly determined ("Unallocated Revenues"), "Gross Receip with respect to such revenues shall mean the portion thereof derived multiplying such revenues by a fraction, the numerator of which is t Gross Receipts from the City and the denominator of which is the to revenues of Franchisee attributable from the area generating su Unallocated Revenues. All revenue from or relating to or connected wi Communication Services deriving from any billing address within the Ci shall be presumed to be Gross Receipts of Franchisee, unle demonstrated in writing to the contrary as to each such revenue.

DD. "**Gross Revenues**" means any revenue actually received by a Grantee, by any other entity that is a Cable Operator on a Grantee's Cable Syste including the Grantee's Affiliates, from the operation of the Grantee Cable System to provide Cable Services. By way of illustration and n limitation, this definition would include to the extent permitted by la revenue derived from pay cable fees, installation and reconnection fee leased channel access fees; Converter rentals; revenue from Cable Interna Service (if it is not required to be included in the Gross Receipts of separate binding Communications Franchise with the City as prescribed i this Exhibit B); commissions from home shopping channels to the exte conducted through a Cable Service; all Cable Service lease payments fro

the Cable System; payments or other consideration received by Grantee from programmers ,except as provided herein, that is accoun for as revenue under generally accepted accounting principles ("GAAP advertising revenues; revenues from data transmissions to the extent th transmissions are considered Cable Services under federal law; payme or other consideration received by the Grantee for the use of the Ca System to provide Cable Service and accounted for as revenue un GAAP. Revenues which are not directly attributable to specific Ca Subscribers, including, but not limited to, leased access fees, advertis revenues, and home shopping commissions, shall be allocated among franchising jurisdictions served by the Grantee's Cable System on a p Subscriber or other equitable basis measured in a consistent manner fr period to period. Gross Revenues shall not include (i) to the ext consistent with GAAP, bad debt; provided, however, that all or part of s such bad debt that is written off but subsequently collected shall included in Gross Revenues in the period collected; (ii) amounts collect from Cable Subscribers for public, educational and governmental acce provided, however, this exclusion does not limit a Grantee's ability to p through franchise related costs to the extent allowed by applicable law; (iii) any taxes on Cable Services furnished by Grantee which are impos directly upon any Subscriber or user by the State, City or oth governmental unit and which are collected by Grantee on behalf of s governmental unit, or (iv) Cable Franchise Fees collected from Cal Subscribers; or (v) payments or other consideration received by the Cal Franchisee from programmers for carriage of programming on the Cal System to the extent that such Cable Franchisee's books and recor indicate that all such payments are utilized for advertising of pub interest community events.

EE. "**Institutional Network" or "I-Net**" means a communication netwo which is constructed or operated by Grantee and which is genera available only to Cable Subscribers who are not residential Subscribe As may be required in the applicable Cable Franchise, the I-Net m consist of capacity, fibers or both, from both within the primary cal network and/or separately constructed networks that may be dedicated governmental, educational and other publicly funded users for two-wa broadband communications. The I-Net includes all equipment a maintenance of equipment required to make the capacity availab including, but not limited to, fiber and coaxial cable, cable moden switching, routing, transmitting and receiving necessary for the use of t network as set out in the *individual Cable Franchise*.

FF. "**Institutional Network Services**" means the provision of an I-Net by Cable System operator to governmental, educational and other Institutional Users pursuant to the terms *of its Franchise* for no commercial applications including, but not limited to, two-way dedicate

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commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have *repeatedly occurred after* notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and *is diligently pursuing* renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where *reasonably warranted*, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on *the community. In considering* whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities *of the applicant and its guaranteed* commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 **Design, Services and Capabilities.**

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any *applicable state or federal regulations*, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures, for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. ***General Technical Standards and Customer Service Practices.***

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.

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B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.

5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.

8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;

(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; an

(ii) The Fee for the delinquent payment shall not exceed percent (5%) of the amount of the delinquent balan month or five dollars ($5) per month, whichever is gre

4. **Refunds.** Refund checks will be issued promptly, but no late either:

(i) The Subscriber's next billing cycle following resoluti the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 5 seq., every Grantee shall prepare and maintain written record Complaints made to them and the resolution of such Compl including the date of such resolution. For purposes of this requireme Complaints that result in the dispatch of a service technician sha individually logged and for all other Complaints the Cable Franchisee satisfy this requirement by the creation of a written summary of the of Complaint and their resolution. Such Complaint logs and summ shall be on file at the office of Grantee, the and available for inspecti the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subs upon request a "lockout" device for blocking both video and portions of any channel(s) of programming entering the Subscr premises. Such device shall be provided at a reasonable charge, exc the extent that federal law specifically provides otherwise. A Grantee however, require a reasonable security deposit for the use of such a d

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its System to a particular area of the City or provision of cable Se to individual or groups of residents on the basis of race, c religion or economic condition. A Grantee shall serve all are the City with populations of at least twenty-five (25) dwelling per cable mile, including areas annexed subsequent to the gr the Franchise, unless otherwise provided by Franchise ordin Such line extension requirements may be modified in a Fran such as where an franchise is granted to a prior existing operator located in area annexed subsequent to the adoption o Exhibit B, or such other circumstances that are sufficiently u as determined by the Governing Body as not to create an u competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall exte System and make Service available at regular installati regular monthly charges upon request to any contiguous a designated for initial Service in the plan when po Subscribers can be served by extension of the Syste occupied dwelling units equivalent to twenty-five (25) u more per cable mile. Such extension shall be at the Grantee Where aerial extension is allowed by regulation but under installation is requested by benefited Subscribers, the c undergrounding that exceeds estimated aerial extension co be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory ext of the Cable System is required for areas newly annexed af effective date of the Franchise, but the technical capabilities then-existing Cable System are such that the minimum tec performance standards required by this Franchise or the cannot be met, then the Grantee shall be required to make extension only if the Grantee can earn a fair return (as measu the Grantee's weighted average cost of capital) on the increm investment required combined with the overall investment b the Cable System within the boundaries of the Franchise Area

4. **Special Agreements.** Nothing herein shall be construed to pr a Grantee from serving areas not covered under this section agreement with developers, property owners or residents.

K. **Customer Service Reporting Requirements.** The City may require reasonable request that a Grantee periodically prepare and furnish to semi-annual reports and any other reasonable information relevant t Grantee's compliance with the customer Service requirements of Chapter measured on a quarterly basis.

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the with respect to City's administration of this Chapter and Exhibit B and applicable Franchise granted pursuant to it. Subject to the pri provisions of the Cable Act, City shall have the right to inspect, upon t (3) business days notice, during Normal Business Hours, all bo records, maps, plans, financial statements, service complaint l performance test results, and other existing like materials of a Grantee relate to the operation of the Grantee's Cable System and that reasonably necessary to Grantor's enforcement or administration of Exhibit B or the Grantee's Franchise. A Grantee shall not be require maintain any books or records for franchise compliance purposes lon than three (3) years, except that financial records necessary to demonst

compliance with the required Cable Franchise Fee payments shall be k for six (6) years. Upon request, the City will treat designated informat disclosed by a Grantee as confidential to the extent permissible under st and federal law. All such review of a Grantee's books and records shall performed by an independent party if the City itself enters into business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitio applications, communications, and reports submitted by a Grantee to FCC, Securities and Exchange Commission, or any other federal or st regulatory commission or agency which directly relate to the operation the Cable System in the City shall be made available contemporaneou to the City upon request. Copies of responses from the above regulato agencies to a Grantee likewise shall be made available promptly to t City upon request. If the City is specifically named in any such pleadi or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within nine (90) days of the end of each of the applicable Grantee's fiscal yea during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of th Grantee showing the Gross Revenues of the Grantee for th preceding fiscal year;

(ii) A current list of names and addresses of each officer an director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grantee' Cable System that were filed with any federal, State, o local agencies during the preceding fiscal year and tha were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices an charges;

(v) A copy, if any, of the Grantee's current Subscriber Servic contract; and

(vi) A copy of Annual Reports to stockholders, if any, fo operating company and parent company.

(vii) An index of all technical and operational reports tha Franchisee is required to develop and maintain with respec to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

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7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

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10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. **Communications Between Grantee and Subscribers.**

1. **Notifications to Subscribers:**

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

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(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

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(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and

(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, the and available for inspection by the City upon request

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.

2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

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

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

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

(ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices and charges;

(v) A copy, if any, of the Grantee's current Subscriber Service contract; and

(vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

(vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.

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commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 Cable Franchise Requirements.

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. **Franchise Territory.**

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

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

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. **Initial Franchise Applications.** Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. **Consideration of Initial Applications.**

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. **Franchise Renewal.** Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. **Grant of Additional Franchise and Competing Service.** Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8.

9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. **Permits for Non-Franchised Entities.**

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 Design, Services and Capabilities.

A. **Cable System Design.** Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. **The Cable System.** Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. **Drops To Public Buildings.**

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one hundred and eighty (180) days if the City requests constructio weather permitting and subject to payment of the Dire Incremental Costs of installation in excess of two hundred (20 feet. Drops and outlets that are in addition to the one free Dr and outlet required by this Section shall be provided by a Grant at the cost of Grantee's Direct Incremental Cost. Alternatively, an institution's request, the institution may add outlets at its ov expense, as long as such installation meets the Grantee's standar which shall be made readily available to any public entity up request. Additional outlets and Services to Public Buildings a subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commerci purposes. The City shall take reasonable precautions to preve any use of a Grantee's Cable System in any inappropriate mann or that may result in loss or damage to the Cable System. Users such outlets shall hold the Grantee harmless from any and a liability or claims arising out of their use of such outlets, other th for those claims arising out of improper installation or faul equipment.

3. In instances where the Drop line from the feeder cable to t Public Building, school or library exceeds 200 feet, the Grant may charge for its Direct Incremental Costs that are incurred exceeding this length. A Cable Franchisee may require advan payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in t applicable Franchise, upon activation and commercial offering of two-w cable modem service within the Franchise Area, every Grantee sha provide upon written request a courtesy cable modem and Cable Intern Service without charge to every State accredited K-12 school and libra in the Franchise Area, which may constitute an element of an individu Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicab Cable Franchise, and subject to any applicable state or federal regulation the City shall have the right to install and maintain, free of charge, upo the poles and within the underground pipes and conduits of a Grantee, an wires and fixtures desired by the City for public purposes. Provide however, that (a) such use by Grantor does not unreasonably interfere wi the current or future use by Grantee; (b) such use by Grantor is restricte to non-commercial public purposes; and (c) Grantor takes reasonabl precautions to prevent any use of Grantee's facilities in any manner th results in an inappropriate use thereof, or any loss or damage to the Cabl System. For the purposes of this subsection, "public purposes" include but is not limited to, the use of the structures and installations for Grant fire, police, traffic, utility, lighting, and/or signal systems, but not Cable System purposes in competition with the Grantee. The Grantee sh not deduct the value of such use of its Facilities from its Cable Franchi Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable Syst (herein referred to as the "System Upgrade"), if required, as set forth in respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provi the System capabilities to comply with the FCC's Emergency Al System rules and regulations. Provided, that at a minimum the capabilities will remain in place even if the FCC at some future da eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide fo "periodic review" between the City and a Grantee to evaluate changes law, technology, or service, and reasonable procedures for mutual agreed upon modifications to the Franchise to incorporate chang identified as desirable or necessary as a result of any such periodic revie

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee w make audio descriptive service and closed captioning capabilities availab to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the Syste the Grantee shall provide standby power backup service capacity capab of providing at least twelve (12) hours of emergency supply at the Cab System Headend. For nodes, two hours with emergency power suppl Every Grantee shall maintain standby power System supplies througho the major trunk cable networks capable of providing emergency pow within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic stat monitoring System, or a functional equivalent, when the Cable System h been activated for interactive service provided that such status monitori is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definitio Television/Advanced Television (HDTV/ATV) formats shall occur i accordance with applicable law.

3.3 Institutional Network, And Public Educational And Governmental Acces Or "PEG Access"

A. **Institutional Network, Access Channels.**

1. Every Grantee shall, to the extent required in its Franchise an subject to applicable law, provide or fund on a similar basis wi other Cable Providers whose Franchises are granted or renewe after the adoption of this Exhibit B an Institutional Network, PEG Access Facilities or other public interest services, or som combination of the same, for use by governmental, educational an other publicly-funded or non-profit local community servic organizations identified by the City. Such public intere requirements shall at a minimum satisfy the community need f such facilities and/or services as determined by the Governin Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidt capacity, service, and funding, for separate Public, Educational an Government Access Channels, as specified in their Franchise. A such PEG Access Channels shall be available to all Subscribers a part of their Basic Cable Service. Given the on-going changes i the state of technology as of the Effective Date of this Exhibit B absent the express written consent of the City, Grantee shal transmit PEG Access Channels in the format or technology utiliz to transmit all of the Channels on the Basic Cable Service tie Oversight and administration of the PEG Access Channels shall b set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on th Access Channels, proof of performance testing throughout the System an on all Channels will be made available to the City to the extent required i a Franchise. Every Grantee will monitor Access Channels throughout th Cable System to determine the level of technical quality of Acces Channels is in conformance with FCC Rules and to ensure that the level o technical quality on such Access Channels is the same as on othe Channels within the Cable System.

3.4 Technical Standards and Customer Service Practices.

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards an establishes customer service practices that every Grantee mus satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service an technical standards required by those regulations and othe applicable laws. The Grantee shall at all times assist and cooperat with Grantor in explaining, interpreting and understanding such records or reports.

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

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

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

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 **Financial Provisions, Remedies, Procedures and Due Process.**

A. **Annual Cable Franchise Fee.**

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

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

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedures.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

(i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

(ii) For all other violations, $250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur, and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;

2. The Grantee practices an act of fraud or deceit upon the City; or

3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.

3.8 **Purchase Of System.**

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

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 **Rights Of Individuals Protected.**

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

B. **Subscriber Privacy.** Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 **Miscellaneous Provisions.**

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

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

CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.

C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 **Mapping of Facilities.** Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 **No Interference.** Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 **Advertising, Signs or Extraneous Markings.** Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public rights-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 **Tree Protection.** Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or

CONTINUED ON NEXT PAGE

replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its usable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORDINANCE NO. 1009

First published in The Legal Record, Tuesday, May 8, 2001.

ORDINANCE NO. 1009

AN ORDINANCE AMENDING ORDINANCE NO. 981 AMENDING CHAPTER 1, ARTICLE 7. PERSONNEL REGULATIONS AND PROCEDURES, SECTION 1-702, SUBPART "B", WITH RESPECT TO FULL-TIME EMPLOYEES OF THE CODE OF THE CITY OF MISSION, KANSAS.

BE IT ORDAINED by the governing body of the City of Mission, Kansas as follows:

SECTION ONE: The Code of the City of Mission, Kansas, Article 7, Personnel Regulations and Procedures, Section 1-702, subpart (b). Full-time Employees, item 3 (B), is hereby amended as follows;

1-702 (b) Full-time Employees. The following schedule shall govern the salaries of full-time employees and wages of part-time employees as established by the governing body. The salary or wages of all employees shall be as determined by the mayor and the department heads, subject to the approval of the governing body. The governing body within the limits hereinafter prescribed shall determine the salary of each department head.

(3) Police Department
(B) Captain of Police - $35,000 to a maximum of $65,000/year.

PASSED AND APPROVED BY THE GOVERNING BODY this 25th day of April 2001.

SIGNED AND APPROVED BY THE MAYOR this 25th day of April 2001.

Sylvester Powell, Jr., Mayor

ATTEST:

Sue A. Grosdidier, City Clerk

NOTICE OF PUBLIC HEARING

First published in The Legal Record. Tuesday. May 8. 2001.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a Public Hearing on Monday, June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenexa City Hall, 12350 West 87th Street Parkway.

At said Hearing, all interested parties will be heard to consider the advisability of adopting an erosion and sedimentation control ordinance, which establishes substantive and procedural requirements to protect and enhance the water quality by controlling erosion, sedimentation and related environmental damage caused by construction related or other soil disturbing activities.

All persons interested are invited to appear and be heard at the time and date above stated.

This ordinance proposal was filed by the City of Lenexa, Kansas.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

Publication Date: May 8, 2001

Planning Commission Meeting Date: June 4, 2001

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, May 8, 2001.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a Public Hearing on June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenexa City Hall, 12350 West 87th Street Parkway.

At said Hearing, all interested parties will be heard to consider the advisability of adopting revisions to the following code section(s):

4-1-B-24-F-15 Wireless Communications Antennas

All persons interested are invited to appear and be heard at the time and date above stated.

This ordinance proposal was filed by the City of Lenexa, Kansas.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

Publication Date: May 8, 2001

Planning Commission Meeting Date: June 4, 2001

replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

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

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennas, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennas/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennas on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennas shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennas in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennas. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 **Notification, Joint Installation and Collocation Requirements.** Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 **Use of Facilities by others; required terms.** If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 **Additional Facilities Requirements; Planned Infrastructure.** When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 **Removal of Facilities.** Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 **Relocation of Facilities.** Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 **Provider Responsible for Costs.** The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 **Insurance and Bonds.** During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

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

5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 **Non-Enforcement by the City.** A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 **Penalties.** Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

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

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

ORDINANCE NO. 1891

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO R-1, SINGLE FAMILY RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "D," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to R-1, Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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SHAFER, KLINE & WARREN, INC. ▪ 11100 West 91st Street, Overland Park, Kansas 66214-3216 ▪ 913/888-7800 FAX: 913/888-7868

May 26, 2000

EXHIBIT D

LEGAL DESCRIPTION FOR
PROPOSED R-1 ZONING
PART OF W½, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Southwest corner of the NW¼ of said Section 34; thence N 2° 01' 05" W, along the West line of the NW¼ of said Section 34, a distance of 423.39 feet; thence N 87° 58' 56" E, a distance of 50 feet; thence S 89° 12' 10" E, a distance of 293.98 feet; thence S 60° 39' 53" E, a distance of 212.69 feet; thence N 65° 38' 45" E, a distance of 205.90 feet; thence N 78° 20' 48" E, a distance of 151.59 feet; thence N 45° 36' 39" E, a distance of 120.03 feet; thence S 53° 30' 33" E, a distance of 149.99 feet; thence Northeasterly and Easterly, along a curve to the right having a radius of 325 feet, a central angle of 51° 30' 33" and whose initial tangent bearing is N 36° 29' 27" E, a distance of 292.18 feet, to a point on the East line of the W½ of the NW¼ of said Section 34; thence S 2° E, along the East line of the W½ of the NW¼ of said Section 34, a distance of 505.98 feet, to the Southeast corner thereof; thence S 2° 00' 08" E, along the East line of the W½ of the SW¼ of said Section 34, a distance of 664.53 feet, to the Southeast corner of the N½ of the NW¼ of the SW¼ of said Section 34; thence S 87° 43' 53" W, along the South line of the N½ of the NW¼ of the SW¼ of said Section 34, a distance of 1,325.20 feet, to the Southwest corner thereof; thence N 2° 01' 39" W, along the West line of the NW¼ of the SW¼ of said Section 34, a distance of 664.25 feet, to the point of beginning, all subject to that part thereof dedicated for street purposes.

The above described tract of land contains 32.547 gross acres, more or less.

By: _____
Scott D. Confer, KS LS-1249
May 26, 2000

SCOTT D. CONFER
LICENSED
LS-1249
KANSAS
LAND SURVEYOR

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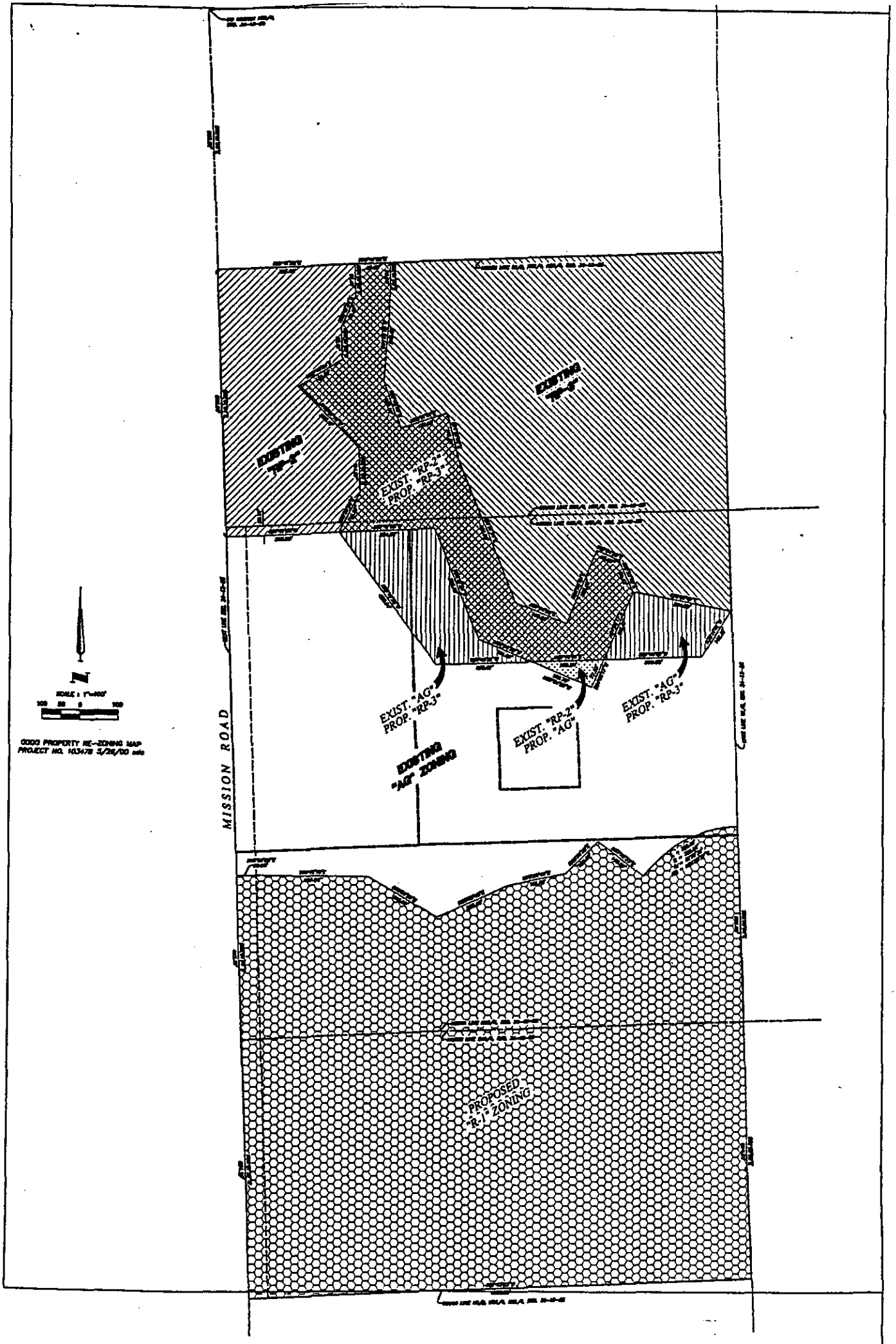
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PROP. "RP-3"
EXIST. "RP-2"
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EXISTING "AG" ZONING
MISSION ROAD
PROPOSED "R-1" ZONING
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SCALE : 1"=400'
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PROJECT NO. 103478 5/26/00 mlc

ORD1891

Publication Fees: $52.66

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1891--9/25/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$52.66

ORDINANCE NO. 1891

First published in The Legal Record, Tuesday, September 25, 2001:

ORDINANCE NO. 1891

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO R-1, SINGLE FAMILY RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "D," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to R-1, Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

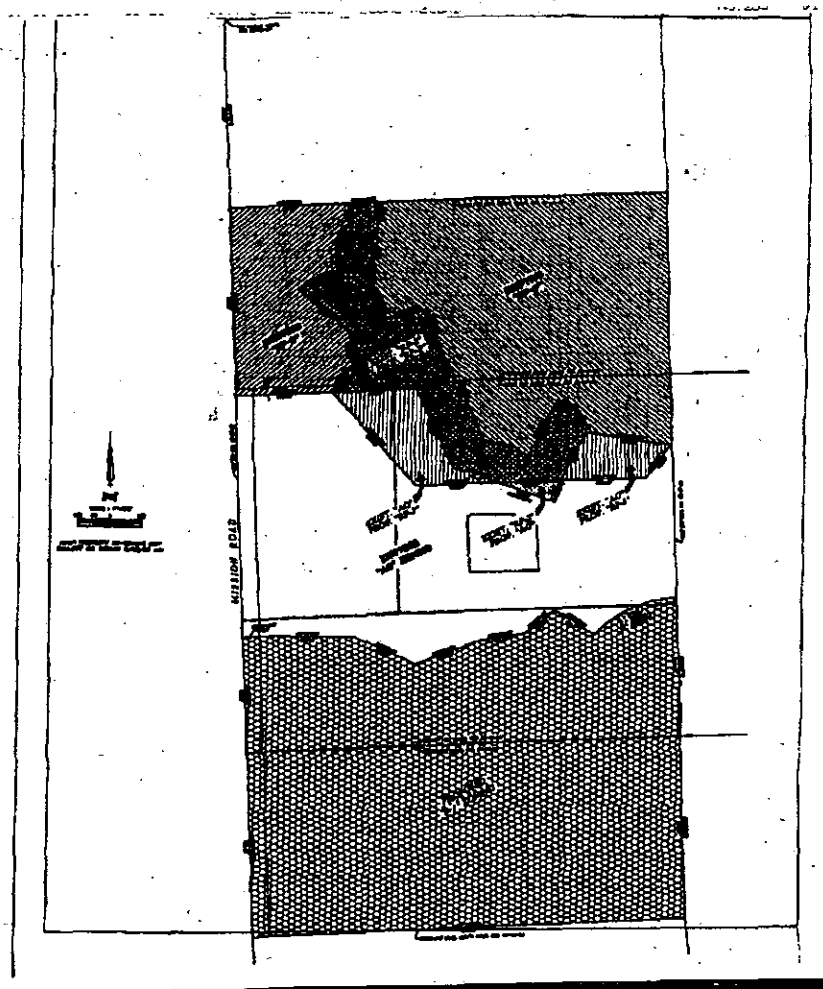
Peggy Dunn/Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney



May 26, 2000

EXHIBIT D

LEGAL DESCRIPTION FOR
PROPOSED R-1 ZONING
PART OF W½, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Southwest corner of the NW¼ of said Section 34; thence N 2° 01' 08" W, along the West line of the NW¼ of said Section 34, a distance of 423.39 feet; thence N 87° 58' 56" E, a distance of 50 feet; thence S 89° 12' 10" E, a distance of 293.98 feet; thence S 60° 39' 53" E, a distance of 212.69 feet; thence N 65° 38' 45" E, a distance of 205.90 feet; thence N 78° 20' 48" E, a distance of 151.59 feet; thence N 45° 36' 38" E, a distance of 120.03 feet; thence S 83° 30' 33" E, a distance of 140.99 feet; thence Northeasterly and Easterly, along a curve to the right having a radius of 325 feet, a central angle of 51° 30' 33" and whose initial tangent bearing is N 36° 29' 27" E, a distance of 292.18 feet, to a point on the East line of the W½ of the NW¼ of said Section 34; thence S 2° E, along the East line of the W½ of the NW¼ of said Section 34, a distance of 505.98 feet, to the Southeast corner thereof; thence S 2° 00' 08" E, along the East line of the W½ of the SW¼ of said Section 34, a distance of 664.53 feet, to the Southeast corner of the N½ of the NW¼ of the SW¼ of said Section 34; thence S 87° 43' 53" W, along the South line of the N½ of the NW¼ of the SW¼ of said Section 34, a distance of 1,225.20 feet, to the Southwest corner thereof; thence N 2° 01' 39" W, along the West line of the NW¼ of the SW¼ of said Section 34, a distance of 664.25 feet, to the point of beginning, all subject to that part thereof dedicated for street purposes.

The above described tract of land contains 32.547 gross acres, more or less.

By: Scott D. Conner, LS-1245
May 26, 2000

SCOTT D. CONNER
LS-1245
KANSAS
LAND SURVEYOR

ORDINANCE NO. 1890

ORDINANCE ACCEPTING REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO AG, AGRICULTURAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "C," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to AG, Agricultural.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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SHAFER, KLINE & WARREN, INC. ■ 11100 West 91st Street, Overland Park, Kansas 66214-3216 ■ 913/888-7800 FAX: 913/888-7868

Tuttle-Wyatt-Woodward Co. founded 1945
Shafer Gullith Snyder, Inc. founded 1947
A. C. Kirkwood & Associates founded 1947
Hamilton & Associates, Inc. founded 1951

May 26, 2000

EXHIBIT C

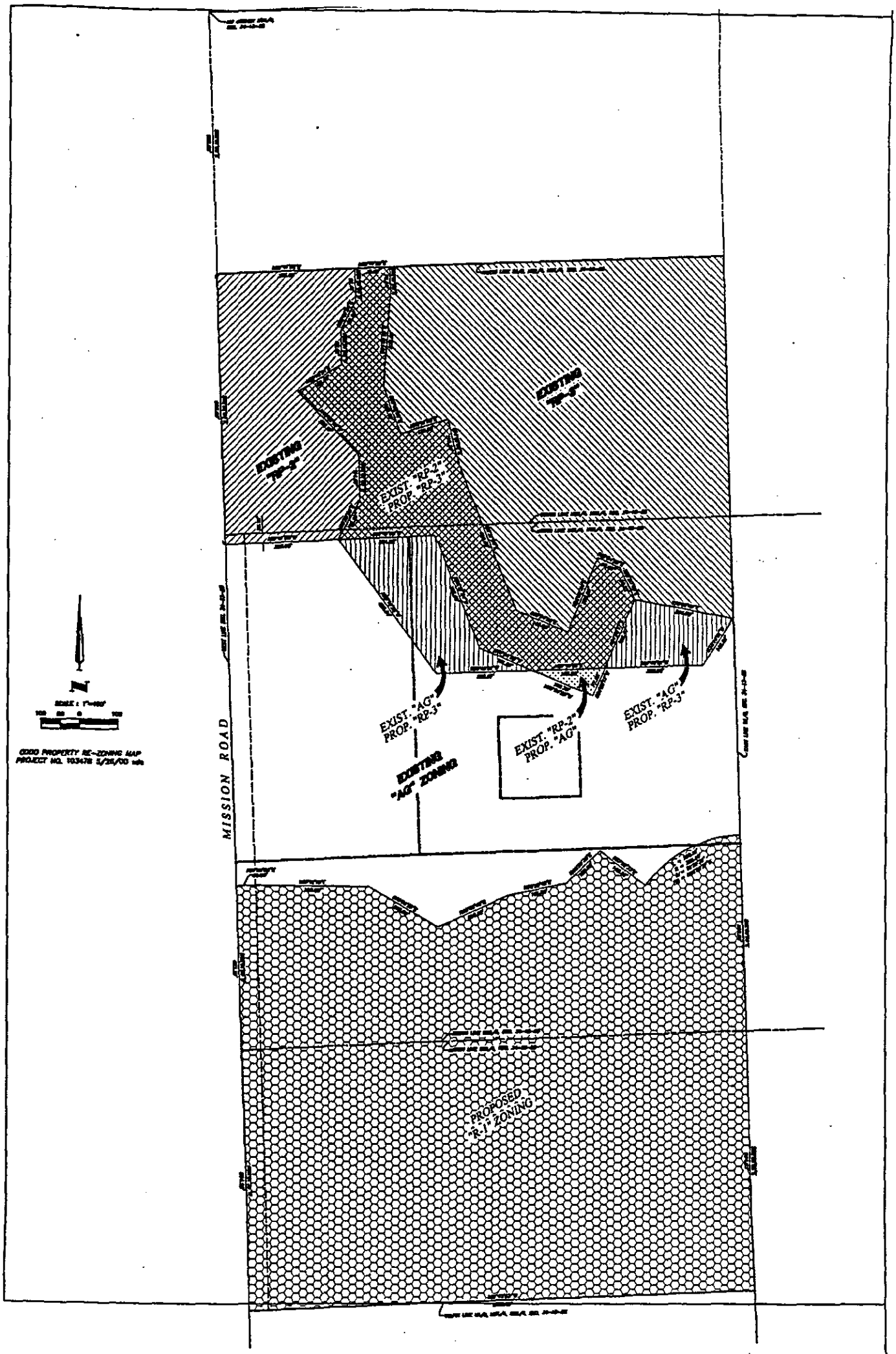
LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO AG
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 549.30 feet, thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 54' 26" E, a distance of 151.25 feet, to the true point of beginning of subject tract; thence continuing S 67° 54' 26" E, a distance of 168.75 feet; thence N 24° 08' 17" E, a distance of 77.53 feet; thence S 87° 46' 51" W, a distance of 188.20 feet, to the true point of beginning of subject tract.

The above described tract of land contains 0.150 acres, more or less.

By: _____
Scott D. Confer, KS LS-1249
May 26, 2000

SCOTT D. CONFER
LICENSED
KANSAS
LAND SURVEYOR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MISSION ROAD
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PROJECT NO. 103478 3/25/00 mh

ORD1890

Publication Fees: $52.66

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes *and says that she is Legal Notices Administrator of The Legal* Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1890--9/25/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$52.66

ORDINANCE NO. 1890

First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1890

ORDINANCE ACCEPTING REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO AG, AGRICULTURAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "C," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to AG, Agricultural.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

(SEAL)

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

CONTINUED ON NEXT PAGE

May 24, 2000

EXHIBIT C

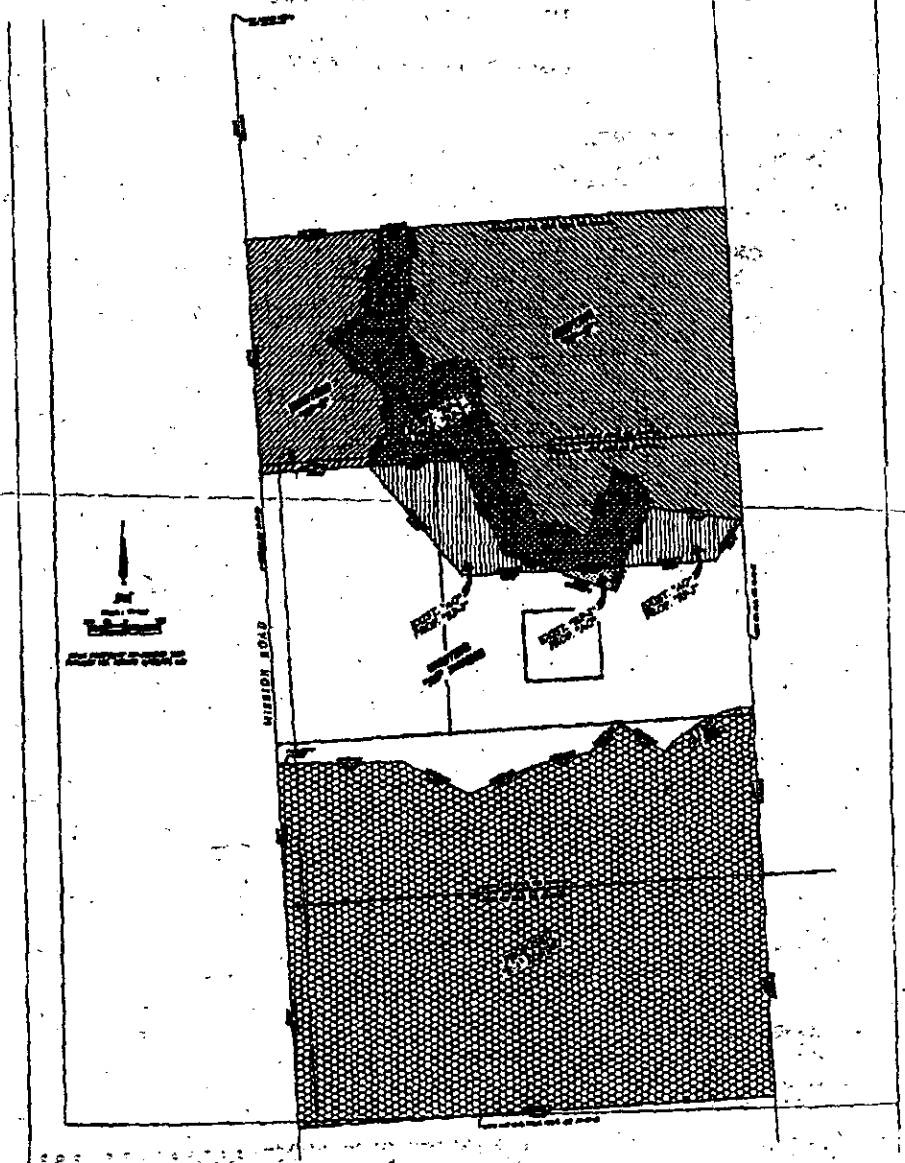
LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO AG
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 549.30 feet, thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 54' 26" E, a distance of 151.25 feet, to the true point of beginning of subject tract; thence continuing S 67° 54' 26" E, a distance of 168.75 feet; thence N 24° 08' 17" E, a distance of 77.33 feet; thence S 87° 46' 51" W, a distance of 188.20 feet, to the true point of beginning of subject tract.

The above described tract of land contains 0.150 acres, more or less.

By: Scott D. Conifer, KSLS-1269
May 26, 2000

SCOTT D. CONIFER
LICENSED
KANSAS
LAND SURVEYOR



ORDINANCE NO. 1889

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "B," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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SHAFER, KLINE & WARREN, INC. ■ 11100 West 91st Street, Overland Park, Kansas 66214-3216 ■ 913/888-7800 FAX: 913/888-7868

May 26, 2000

EXHIBIT B

LEGAL DESCRIPTION FOR
PROPOSED REZONING
AG TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 295 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 58" E, along a line 25.12 feet South of and parallel to the North line of the SW¼ of the NW¼ of said Section 34, a distance of 254.30 feet; thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 54' 26" E, a distance of 151.25 feet, to a point hereinafter referred to as Point "A"; thence S 87° 46' 51" W, a distance of 252.57 feet; thence N 37° 10' 28" W, a distance of 429.04 feet; to the true point of beginning of subject tract...and also...Commencing at aforementioned Point "A"; thence N 87° 46' 51" E, a distance of 188.20 feet, to the true point of beginning of subject tract; thence continuing N 87° 46' 51" E, a distance of 260.58 feet; thence N 33° 14' 01" E, a distance of 142.82 feet, to a point on the East line of the SW¼ of the NW¼ of said Section 34; thence N 79° 56' 47" W, a distance of 264 feet; thence S 24° 08' 17" W, a distance of 192.47 feet, to the true point of beginning of subject tract.

The above described tracts of land contain 2.579 acres, more or less.

By: _____
Scott D. Confer, KS LS-1249
May 26, 2000

SCOTT D. CONFER
LICENSED
LS-1249
KANSAS
LAND SURVEYOR

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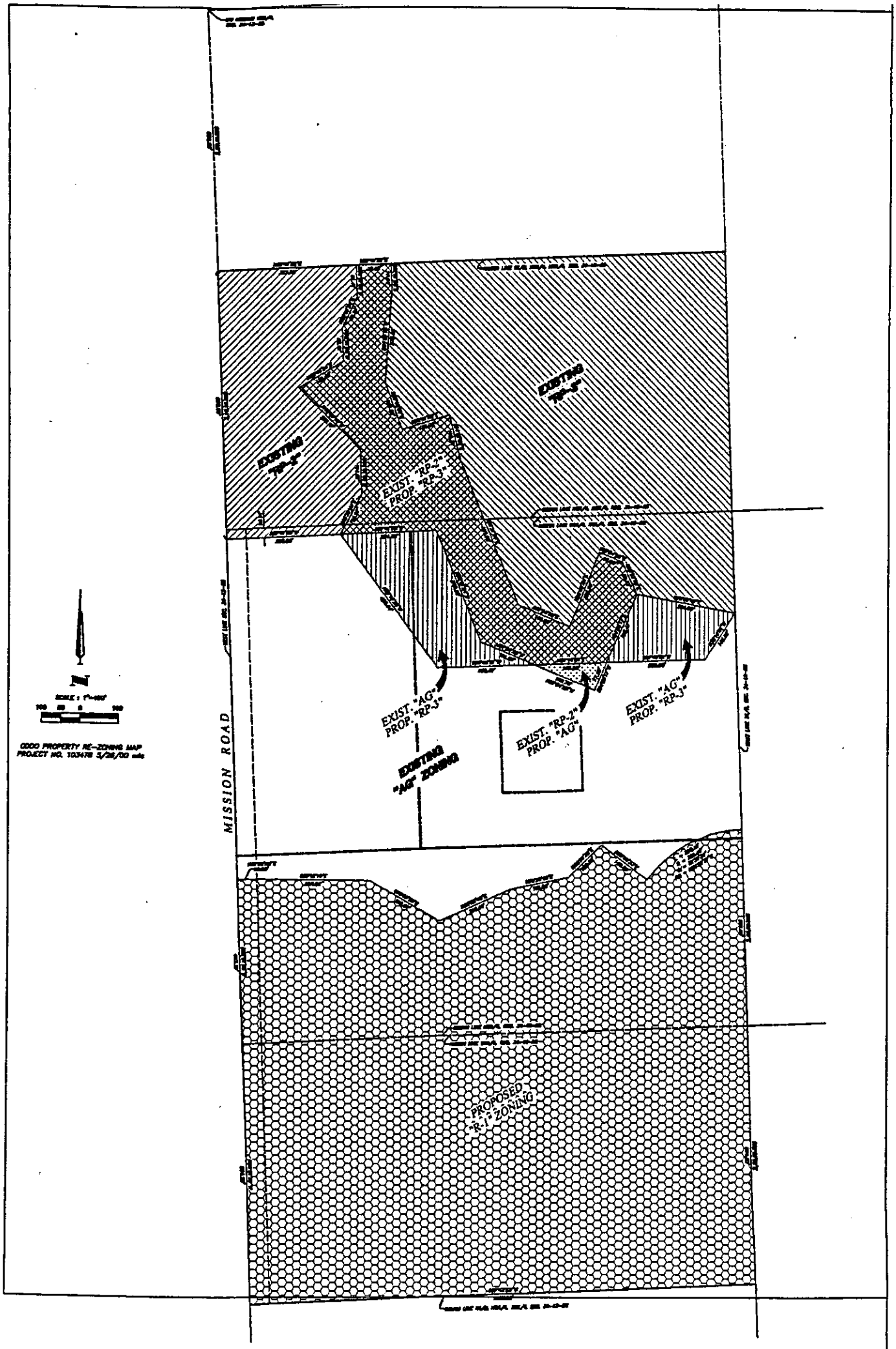
EXISTING "RP-3"
EXISTING "RP-3"
EXIST. "RP-2"
PROP. "RP-3"
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PROP. "RP-3"
EXIST. "RP-2"
PROP. "AG"
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PROP. "RP-3"
EXISTING "AG" ZONING
MISSION ROAD
PROPOSED "R-1" ZONING
N
SCALE : 1"=100'
100 50 0 100
ODOO PROPERTY RE-ZONING MAP
PROJECT NO. 103478 5/26/00 mlc

ORD1889

Publication Fees: $52.66

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a *period of more than one year prior to the first publication of the* notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1889--9/25/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$52.66

ORDINANCE NO. 1889

First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1889

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "B," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

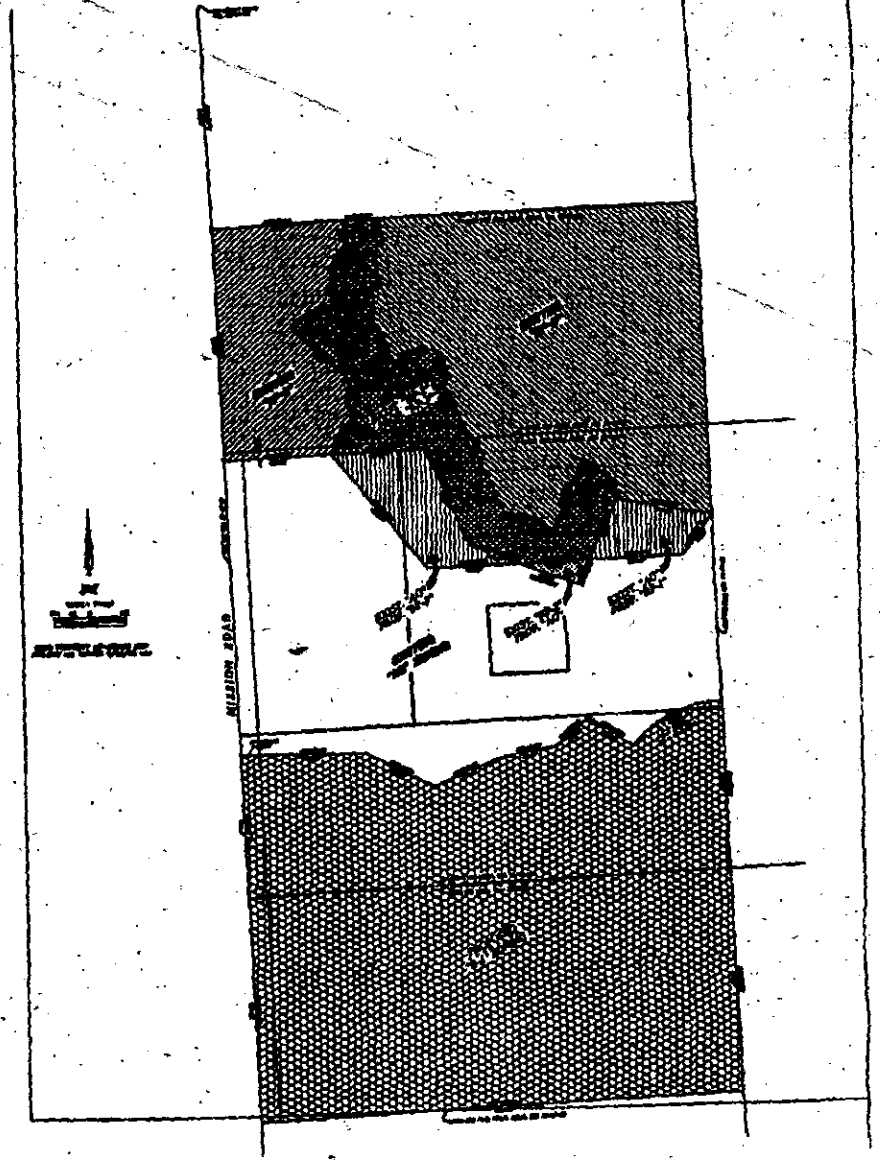
Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney



May 26, 2000

EXHIBIT B

LEGAL DESCRIPTION FOR
PROPOSED REZONING
AG TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 1,250.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 295 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 58" E, along a line 25.12 feet South of and parallel to the North line of the SW¼ of the NW¼ of said Section 34, a distance of 254.30 feet; thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 54' 26" E, a distance of 151.25 feet, to a point hereinafter referred to as Point "A"; thence S 87° 46' 51" W, a distance of 252.37 feet; thence N 37° 10' 28" W, a distance of 429.04 feet; to the true point of beginning of subject tract...and also...Commencing at aforementioned Point "A"; thence N 87° 46' 51" E, a distance of 188.20 feet, to the true point of beginning of subject tract; thence continuing N 87° 46' 51" E, a distance of 260.58 feet; thence N 33° 14' 01" E, a distance of 142.82 feet, to a point on the East line of the SW¼ of the NW¼ of said Section 34; thence N 79° 58' 47" W, a distance of 264 feet; thence S 24° 08' 17" W, a distance of 192.47 feet, to the true point of beginning of subject tract.

The above described tracts of land contain 3.579 acres, more or less.

By:

ORDINANCE NO. 1888

ORDINANCE REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\4pinelakA.doc

SHAFER, KLINE & WARREN, INC. ■ 11100 West 91st Street, Overland Park, Kansas 66214-3216 ■ 913/888-7800 FAX: 913/888-7868

May 26, 2000

EXHIBIT A

LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 662.88 feet, to the Northwest corner of the S½ of the NW¼ of the NW¼ of said Section 34; thence N 87° 41' 22" E, along the North line of the S½ of the NW¼ of the NW¼ of said Section 34, a distance of 357.50 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 22" E, along the North line of the S½ of the NW¼ of the NW¼ of said Section 34, a distance of 92.50 feet; thence S 2° 01' 05" E, a distance of 70 feet; thence S 4° 05' 15" W, a distance of 235 feet; thence S 20° 43' 59" E, a distance of 129.26; thence N 72° 41' 58" E, a distance of 130 feet; thence S 14° 18' 02" E, a distance of 119.39 feet; thence S 22° 21' 24" E, a distance of 400 feet; thence S 67° 54' 26" E, a distance of 145 feet; thence N 22° 05' 34" E, a distance of 205 feet; thence S 67° 54' 26" E, a distance of 65 feet; thence S 25° 23' 50" E, a distance of 90.53 feet; thence S 24° 08' 17" W, a distance of 192.47 feet; thence S 87° 46' 51" W, a distance of 188.20 feet; thence N 67° 54' 26" W, a distance of 151.25 feet; thence N 22° 21' 24" W, a distance of 308.60 feet, to a point 25.12 feet South of the South line of the NW¼ of the NW¼ of said Section 34; thence S 87° 41' 58" W, along a line 25.12 feet South of and parallel with the South line of the NW¼ of the NW¼ of said Section 34, a distance of 254.30 feet; thence N 28° 30' 50" E, a distance of 116.26 feet; thence N 2° 01' 05" W, a distance of 114.87 feet; thence N 45° 06' 43" W, a distance of 226.19 feet; thence N 59° 46' 24" E, a distance of 132.93 feet; thence N 2° 01' 05" W, a distance of 85.91 feet; thence

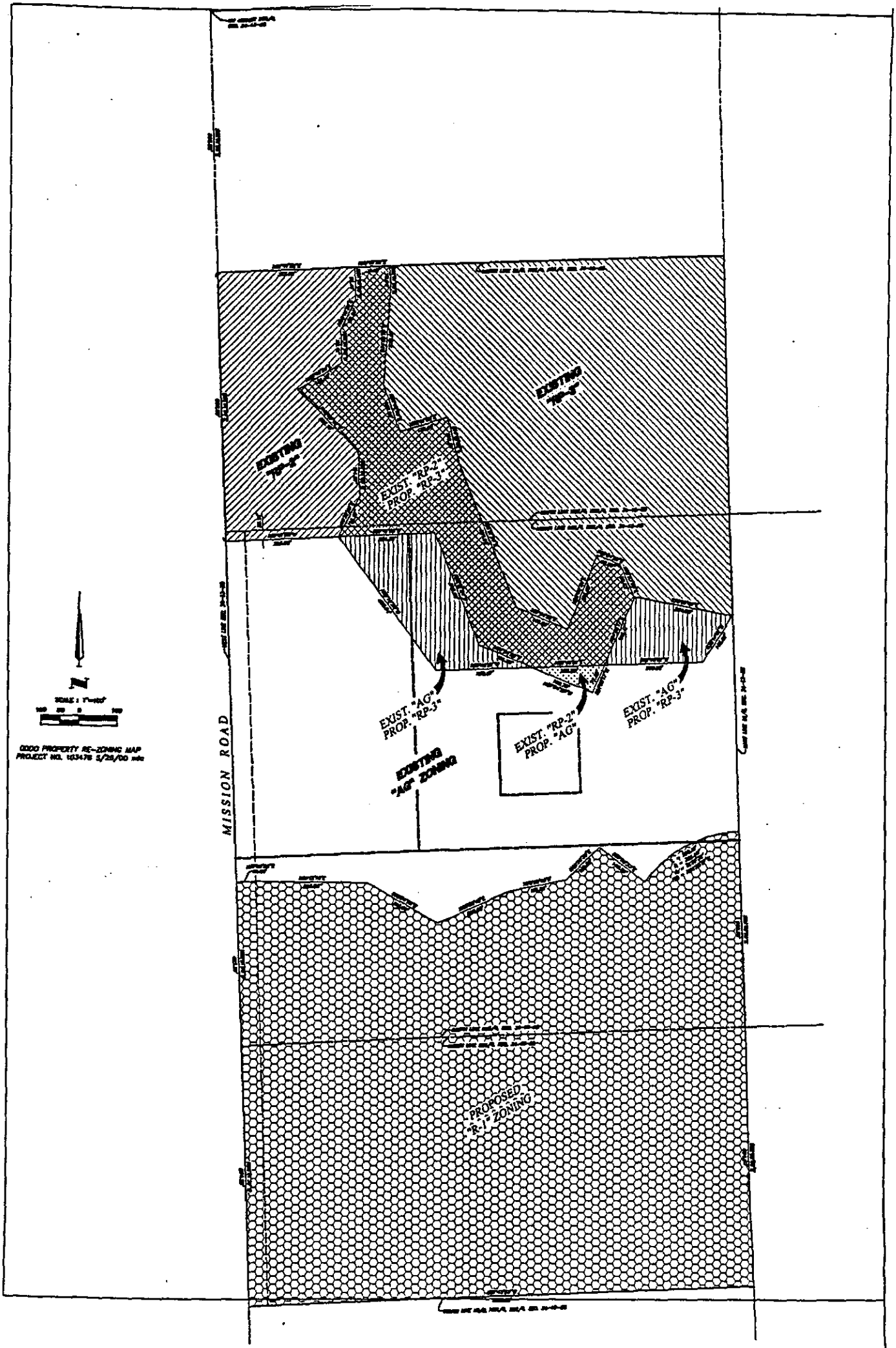
LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
MAY 26, 2000
PAGE 2

N 25° 46' 24" E, a distance of 88.24 feet; thence N 2° 15' 40" W, a distance of 81.41 feet, to the true point of beginning of subject tract.

The above described tract of land contains 5.228 acres, more or less.

By: _____
Scott D. Confer, KS LS-1249
May 26, 2000

SCOTT D. CONFER
LICENSED
LS-1249
KANSAS
LAND SURVEYOR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PROP. "AG"
EXIST. "AG"
PROP. "RP-3"
EXISTING "AG" ZONING
MISSION ROAD
PROPOSED "R-1" ZONING
N
SCALE: 1"=100'
100 50 0 100
ODDO PROPERTY RE-ZONING MAP
PROJECT NO. 1034176 5/26/00 mkc

ORD1888

Publication Fees: $59.70

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1888--9/25/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$59.70

ORDINANCE NO. 1888

First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1888

ORDINANCE REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

May 24, 2000

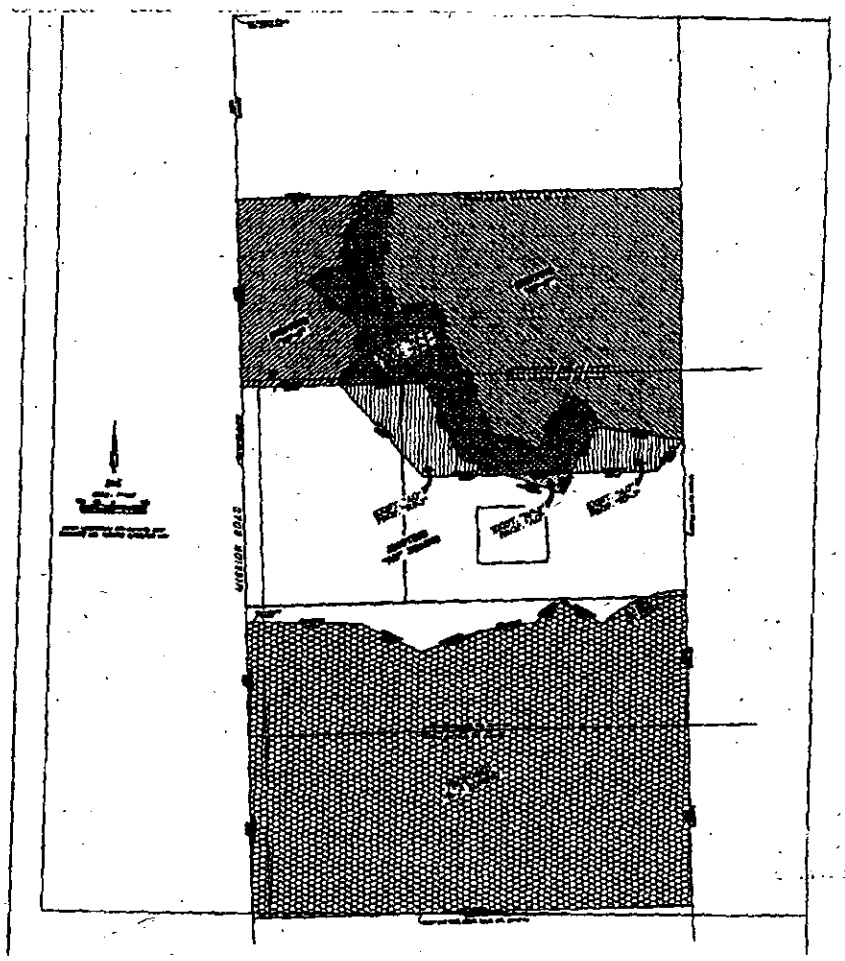
EXHIBIT A

LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 662.88 feet, to the Northwest corner of the S½ of the NW¼ of the NW¼ of said Section 34; thence N 87° 41' 22" E, along the North line of the S½ of the NW¼ of the NW¼ of said Section 34, a distance of 337.50 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 22" E, along the North line of the S½ of the NW¼ of the NW¼ of said Section 34, a distance of 92.50 feet; thence S 2° 01' 05" E, a distance of 70 feet; thence S 4° 05' 15" W, a distance of 235 feet; thence S 30° 43' 59" E, a distance of 129.26; thence N 72° 41' 58" E, a distance of 130 feet; thence S 14° 18' 02" E, a distance of 119.39 feet; thence S 22° 21' 24" E, a distance of 400 feet; thence S 67° 54' 26" E, a distance of 145 feet; thence N 22° 05' 34" E, a distance of 205 feet; thence S 67° 54' 26" E, a distance of 65 feet; thence S 25° 23' 30" E, a distance of 90.53 feet; thence S 24° 08' 17" W, a distance of 182.47 feet; thence S 87° 46' 51" W, a distance of 188.20 feet; thence N 67° 54' 26" W, a distance of 151.25 feet; thence N 22° 21' 24" W, a distance of 308.60 feet, to a point 25.12 feet South of the South line of the NW¼ of the NW¼ of said Section 34; thence S 87° 41' 58" W, along a line 25.12 feet South of and parallel with the South line of the NW¼ of the NW¼ of said Section 34, a distance of 254.10 feet; thence N 28° 30' 50" E, a distance of 116.26 feet; thence N 2° 01' 05" W, a distance of 114.87 feet; thence N 45° 05' 43" W, a distance of 226.19 feet; thence N 50° 46' 24" E, a distance of 132.93 feet; thence N 2° 01' 05" W, a distance of 88.91 feet; thence N 25° 46' 24" E, a distance of 88.24 feet; thence N 2° 15' 40" W, a distance of 81.41 feet, to the true point of beginning of subject tract.

The above described tract of land contains 5.226 acres, more or less.

By: Scott D. Cooper, PLS-1248
May 24, 2000



CONTINUED FROM PRECEDING PAGE

May 24, 2000

EXHIBIT C

LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO AG
PART OF NW¼, SEC. 34-12-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the NW¼ of Section 34, Township 12, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW¼ of said Section 34; thence S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 549.30 feet, thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 34' 26" E, a distance of 151.25 feet, to the true point of beginning of subject tract; thence continuing S 67° 34' 26" E, a distance of 168.75 feet; thence N 24° 08' 17" E, a distance of 77.33 feet; thence S 87° 46' 51" W, a distance of 185.20 feet, to the true point of beginning of subject tract.

The above described tract of land contains 0.150 acres, more or less.

By: _____
Scott D. Conner, KSRLS-1289
May 26, 2000

SCOTT D. CONNER
KANSAS
LAND SURVEYOR

NOTICE TO BIDDERS

First published in The Legal Record, Tuesday, September 25, 2001.

CITY OF LENEXA,

NOTICE TO BIDDERS

Sealed bids for Asphalt Jogging Trail - Parkhurst Park from Renner Road to Shawnee Mission Park will be accepted by the City of Lenexa, Kansas at the office of City Clerk, Lenexa City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas 66215, until 8:30 A.M. (local time) on October 11, 2001, at which time bids will be publicly opened and read aloud at the Lenexa City Hall. Any bid received after the designated closing time will not be considered and will be returned unopened.

All bids shall be submitted in sealed envelopes addressed to the CITY OF LENEXA, KANSAS, ATTENTION: CITY CLERK, and marked "Bid for: Asphalt Jogging Trail - Parkhurst Park from Renner Road to Shawnee Mission Park." Copies of plans, specifications, bidding documents and other Contract Documents are on file at the office of:

CITY CLERK
City of Lenexa - City Hall
12350 W. 87th Street Parkway
Lenexa, KS 66215

Bidders desiring Contract Documents for use in preparing bids may obtain a set of such documents at the address above upon payment of Fifty and No/100 Dollars ($50.00), which amount is non-refundable.

CONTRACTORS SHOULD READ AND BE FULLY FAMILIAR WITH ALL CONTRACT DOCUMENTS INCLUDING ADDENDA BEFORE SUBMITTING A BID. IN SUBMITTING A BID, THE BIDDER WARRANTS THAT IT HAS READ THE CONTRACT DOCUMENTS AND IS FULLY FAMILIAR THEREWITH AND THAT IT HAS VISITED THE SITE OF THE WORK TO FULLY INFORM ITSELF AS TO ALL EXISTING CONDITIONS AND LIMITATIONS AND SHALL INCLUDE IN ITS BID A SUM TO COVER THE COST OF ALL ITEMS OF THE WORK AS SPECIFIED IN THE CONTRACT DOCUMENTS.

No oral telegraphic, telephonic proposals or alterations will be considered. Facsimile transmissions will not be accepted.

The following items must be included in the sealed envelope with the Bid:

a. Bid Form;

b. 5% Bid Security--Bid Bond, Cashier's Check or Certified Check (See below).

Each bidder shall file with its bid a bid bond, a cashier's check or a certified check drawn on an acceptable bank, made payable to City of Lenexa, Kansas, in an amount equal to five percent (5%) of the total bid, which shall be retained by City of Lenexa, Kansas until a Contract for the project has been executed. Bid Bonds will be returned to the bidders, with the exception of the best and lowest and second best and second lowest responsible bidders, within twenty-one (21) days after their bids are rejected. The bid deposit of the lowest and the second lowest responsible bidders will be returned when the Performance Bond, Maintenance Bond and Statutory Bond, each in an amount equal to 100% of the Contract amount; required insurance certificates and other required documents shall have been furnished and the Contract Documents have been executed by the successful bidder.

In the event the low bidder is unable to execute the Contract, for whatever reason, within the time provided in the Notice of Award, City may annul the Notice of Award and the bid deposit may be forfeited and City shall exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to the bid security or specific performance.

City reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the bidder received in the office of City Clerk, prior to the time and date for bid opening.

ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF CITY BECAUSE OF SUCH REJECTION, AND THE FILING OF ANY BID IN RESPONSE TO THIS NOTICE SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THESE CONDITIONS.

If this section is completed, a **Pre-Bid Conference** will be held at:

Lenexa Public Works Conference Room – Lower Level of Lenexa City Hall

on October 4, 2001, at 9:30 A.M.

Marian Fry
CITY CLERK, CITY OF LENEXA, KANSAS

ORDINANCE NO. 1887

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $4,300,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685, *et seq.* and Ordinance No. 1372;

(b) Acquisition of certain real property in Leawood South Park and construction and installation of a new fire station thereon pursuant to K.S.A. 12-1736 *et seq.* and Ordinance No. 1704;

(c) Acquisition, construction and installation of a new public works facility within the City pursuant to 12-1736 *et seq.* and Resolution No. 1532;

(d) Improvement and reimprovement of 119th Street and Mission Road in the area of the intersection thereof pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1505;

(e) Improvement of Lee Boulevard between 103rd Street and 105th Street within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1886;

(f) Construction of 133rd Street from the intersection of said street and State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1525; and

(g) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1524;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued certain Temporary Notes dated July 15, 2000, in the principal amount of $1,200,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,100,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Four Million Three Hundred Thousand Dollars ($4,300,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the respective City Improvement Projects which remain outstanding does not exceed the total estimated cost of each of such City Improvement Projects.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing

Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 8. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or

advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 9. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 10. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

(SEAL)

ATTEST:

Martha Heizer, City Clerk

Peggy J. Dunn, Mayor

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORD1887

Publication Fees: $95.56

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1887--3/20/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 21, 2001

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$95.56

ORDINANCE NO. 1887

First published in The Legal Record, Tuesday, March 20, 2001.

ORDINANCE NO. 1887

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $4,300,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685, *et seq.* and Ordinance No. 1372;

(b) Acquisition of certain real property in Leawood South Park and construction and installation of a new fire station thereon pursuant to K.S.A. 12-1736 *et seq.* and Ordinance No. 1704;

(c) Acquisition, construction and installation of a new public works facility within the City pursuant to 12-1736 *et seq.* and Resolution No. 1532;

(d) Improvement and reimprovement of 119th Street and Mission Road in the area of the intersection thereof pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1505;

(e) Improvement of Lee Boulevard between 103rd Street and 105th Street within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1886;

(f) Construction of 133rd Street from the intersection of said street and State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1525; and

(g) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1524;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued certain Temporary Notes dated July 15, 2000, in the principal amount of $1,100,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,200,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Four Million Three Hundred Thousand Dollars ($4,300,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the respective City Improvement Projects which remain outstanding does not exceed the total estimated cost of each of such City Improvement Projects.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 8. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 9. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 10. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

(S E A L)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1886

AN ORDINANCE AUTHORIZING THE IMPROVEMENT OF A CERTAIN SECTION OF LEE BOULEVARD, A MAIN TRAFFICWAY, BETWEEN 103RD STREET AND 105TH STREET WITHIN THE CITY OF LEAWOOD; PROVIDING FOR ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT BONDS OF THE CITY TO PAY THE COSTS THEREOF PURSUANT TO K.S.A. 12-689; AND FOR THE ISSUANCE OF TEMPORARY NOTES OF THE CITY PENDING THE ISSUANCE OF SAID BONDS; AND EXPRESSING THE INTENT TO REIMBURSE COSTS OF THE PROJECT SO INCURRED FROM PROCEEDS OF GENERAL OBLIGATION BONDS; AND AUTHORIZING AND IMPROVING CERTAIN RELATED MATTERS AND ACTIONS.

WHEREAS, the City of Leawood, Kansas has previously by Section 14-206 of the "Code of the City of Leawood, Kansas", designated that portion of Lee Boulevard which is located within this City as a main trafficway pursuant to the provisions of K.S.A. 12-685; and

WHEREAS, K.S.A.12-687 provides that the Governing Body of any city shall have power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and such improvement or reimprovement may include grading, regrading, curbing, recurbing, guttering, reguttering, paving, repaving, macadamizing, remacadamizing, constructing, reconstructing, opening, widening, extending, rounding corners, straightening, relocating, construction or reconstruction of any necessary bridges and approaches thereto, viaducts, overpasses, underpasses, culverts, storm drainage, trafficway illumination, traffic control devices, pedestrian ways, bicycle ways, or other improvements or any two or more of such improvements or reimprovements and the acquisition of right-of-way by purchase or condemnation when necessary for any of such purposes; and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the City at large and may be funded by, among other alternatives, the issuance of general obligation improvement bonds; and

WHEREAS, Section 1.103-18 of the Income Tax Regulations issued by the Internal Revenue Service (the "Regulations") requires that the City make a prior declaration of its intent to reimburse itself for project expenditures made by the City prior to the date of issuance of notes or bonds, and the City desires to comply with the requirements of the Regulations with respect to this Project; and

WHEREAS, said Governing Body finds and determines that it is necessary to improve and reimprove that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, as provided by and under the authority of K.S.A. 12-687, and to provide for the payment of the costs thereof as provided by and under the authority of K.S.A. 12-689.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. It is hereby deemed and declared to be necessary to improve and reimprove that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, and it is hereby authorized, ordered, and directed that said main trafficway improvements be undertaken under the authority of K.S.A. 12-687.

Section 2. The total estimated cost of the above described main trafficway improvements or reimprovements, including construction, engineering fees, acquisition of right-of-way and easements, and contingencies, is $1,295,097 and shall be chargeable to the City at large to be paid by the issuance of general obligation improvement bonds of the City of Leawood under the authority of K.S.A. 12-689.

Section 3. That the costs incurred in connection with the Project shall be paid for from the proceeds of temporary notes to be issued from time to time as said costs are so incurred, and the Project shall be permanently financed with the proceeds of the sale of general obligation improvement bonds of the City in an amount not to exceed $1,295,097.

Section 4. That to the extent the City shall pay all or any portion of the costs of the Project from available funds on hand prior to the issuance of temporary notes or bonds, the City hereby declares that it reasonably expects to reimburse such expenditures out of the proceeds of such temporary notes and such general obligation bonds. All such expenditures so reimbursed shall be capital expenditure with the meaning of Section 1.150-1(h) of the Income Tax Regulations (the "Regulations").

This declaration is a declaration of official intent adopted pursuant to Section 1.103-18 of the Regulations.

Section 5. That as of the date hereof, there are not City funds reserved, allocated on a long term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than pursuant to the issuance of temporary notes or the bonds. This Ordinance, therefore is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and content of the Regulations.

Section 6. That this Ordinance shall be filed within 30 days of its adoption in the publicly available official books and records of the City. This Ordinance shall be available for inspection at the office of the City Clerk at City Hall during normal business hours of the City on every business day until the date of issuance of the bonds.

Section 7. That the City's Director of Finance shall be responsible for making any "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the notes or the bonds to reimburse the source of temporary financing used by the City to make payment of the prior costs of the Project. Each allocation

shall be evidenced by an entry on the official books and records of the City maintained for the notes or the bonds, shall specifically identify the actual reimbursement of a fund or account in accordance with Section 1.103-18, the fund or account form which the expenditure was paid, and shall be effective to relieve the proceeds of the notes or the bonds from any restriction under the ordinance or other documents authorizing the issuance of such notes or the bonds, and under any applicable state statute, which would apply to the unspent proceeds of the notes or the bonds.

Section 8. This Ordinance shall take effect and be in force from and after its passage and approval and publication one time in the official City newspaper.

ADOPTED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

(SEAL)

Peggy J. Dunn, Mayor

Attest:

Marcia Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1886

Publication Fees: $58.12

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1886--3/20/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 21, 2001

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$58.12

ORDINANCE NO. 1886

First published in The Legal Record, Tuesday, March 20, 2001.

ORDINANCE NO. 1886

AN ORDINANCE AUTHORIZING THE IMPROVEMENT OF A CERTAIN SECTION OF LEE BOULEVARD, A MAIN TRAFFICWAY, BETWEEN 103RD STREET AND 105TH STREET WITHIN THE CITY OF LEAWOOD; PROVIDING FOR ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT BONDS OF THE CITY TO PAY THE COSTS THEREOF PURSUANT TO K.S.A. 12-689; AND FOR THE ISSUANCE OF TEMPORARY NOTES OF THE CITY PENDING THE ISSUANCE OF SAID BONDS; AND EXPRESSING THE INTENT TO REIMBURSE COSTS OF THE PROJECT SO INCURRED FROM PROCEEDS OF GENERAL OBLIGATION BONDS; AND AUTHORIZING AND IMPROVING CERTAIN RELATED MATTERS AND ACTIONS.

WHEREAS, the City of Leawood, Kansas has previously by Section 14-206 of the "Code of the City of Leawood, Kansas", designated that portion of Lee Boulevard which is located within this City as a main trafficway pursuant to the provisions of K.S.A. 12-685; and

WHEREAS, K.S.A.12-687 provides that the Governing Body of any city shall have power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and such improvement or reimprovement may include grading, regrading, curbing, recurbing, guttering, reguttering, paving, repaving, macadamizing, remacadamizing, constructing, reconstructing, opening, widening, extending, rounding corners, straightening, relocating, construction or reconstruction of any necessary bridges and approaches thereto, viaducts, overpasses, underpasses, culverts, storm drainage, trafficway illumination, traffic control devices, pedestrian ways, bicycle ways, or other improvements or any two or more of such improvements or reimprovements and the acquisition of right-of-way by purchase or condemnation when necessary for any of such purposes; and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the City at large and may be funded by, among other alternatives, the issuance of general obligation improvement bonds; and

WHEREAS, Section 1.103-18 of the Income Tax Regulations issued by the Internal Revenue Service (the "Regulations") requires that the City make a prior declaration of its intent to reimburse itself for project expenditures made by the City prior to the date of issuance of notes or bonds, and the City desires to comply with the requirements of the Regulations with respect to this Project; and

WHEREAS, said Governing Body finds and determines that it is necessary to improve and reimprove that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, as provided by and under the authority of K.S.A. 12-687, and to provide for the payment of the costs thereof as provided by and under the authority of K.S.A. 12-689.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. It is hereby deemed and declared to be necessary to improve and reimprove that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, and it is hereby authorized, ordered, and directed that said main trafficway improvements be undertaken under the authority of K.S.A. 12-687.

Section 2. The total estimated cost of the above described main trafficway improvements or reimprovements, including construction, engineering fees, acquisition of right-of-way and easements, and contingencies, is $1,295,097 and shall be chargeable to the City at large to be paid by the issuance of general obligation improvement bonds of the City of Leawood under the authority of K.S.A. 12-689.

Section 3. That the costs incurred in connection with the Project shall be paid for from the proceeds of temporary notes to be issued from time to time as said costs are so incurred, and the Project shall be permanently financed with the proceeds of the sale of general obligation improvement bonds of the City in an amount not to exceed $1,295,097.

Section 4. That to the extent the City shall pay all or any portion of the costs of the Project from available funds on hand prior to the issuance of temporary notes or bonds, the City hereby declares that it reasonably expects to reimburse such expenditures out of the proceeds of such temporary notes and such general obligation bonds. All such expenditures so reimbursed shall be capital expenditure with the meaning of Section 1.150-1(b) of the Income Tax Regulations (the "Regulations").

This declaration is a declaration of official intent adopted pursuant to Section 1.103-18 of the Regulations.

Section 5. That as of the date hereof, there are not City funds reserved, allocated on a long term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than pursuant to the issuance of temporary notes or the bonds. This Ordinance, therefore is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and content of the Regulations.

Section 6. That this Ordinance shall be filed within 30 days of its adoption in the publicly available official books and records of the City. This Ordinance shall be available for inspection at the office of the City Clerk at City Hall during normal business hours of the City on every business day until the date of issuance of the bonds.

Section 7. That the City's Director of Finance shall be responsible for making any "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the notes or the bonds to reimburse the source of temporary financing used by the City to make payment of the prior costs of the Project. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the notes or the bonds, shall specifically identify the actual reimbursement of a fund or account in accordance with Section 1.103-18, the fund or account form which the expenditure was paid, and shall be effective to relieve the proceeds of the notes or the bonds from any restriction under the ordinance or other documents authorizing the issuance of such notes or the bonds, and under any applicable state statute, which would apply to the unspent proceeds of the notes or the bonds.

Section 8. This Ordinance shall take effect and be in force from and after its passage and approval and publication one time in the official City newspaper.

ADOPTED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

(SEAL)

Peggy J. Dunn, Mayor

Attest:

Marcia Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1885 C

AN ORDINANCE AMENDING CHAPTER 13, ARTICLE 1, SECTION 2 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO CONSTRUCTION STANDARDS, AND REPEALING EXISTING CODE SECTION 13-102.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: *Chapter 13, Article 1, Section 2, of the Code of the City of* Leawood, Kansas, 2000, is hereby amended to read as follows:

13-102. INCORPORATING SPECIFICATIONS AND STANDARDS. There is hereby incorporated by reference that certain publication known as "Public Improvement Construction Standards," prepared and published by the City of Leawood, January 2001. No fewer than three copies of said publication shall be marked or stamped "Official Copy as Adopted by Ordinance No.1885 C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1847C, 2-7-00)

SECTION TWO: Repeal of Existing Sections. The existing Code § 13-102 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Publication: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 5th day of March, 2001.

APPROVED by the Mayor this 5th day of March, 2001.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1885C

Publication Fees: $32.40

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1885C--3/6/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

MARCH 7, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$32.40

ORDINANCE NO. 1885 C

First published in The Legal Record, Tuesday, March 6, 2001.

ORDINANCE NO. 1885 C

AN ORDINANCE AMENDING CHAPTER 13, ARTICLE 1, SECTION 2 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO CONSTRUCTION STANDARDS, AND REPEALING EXISTING CODE SECTION 13-102.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 13, Article 1, Section 2, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

13-102. **INCORPORATING SPECIFICATIONS AND STANDARDS.** There is hereby incorporated by reference that certain publication known as "Public Improvement Construction Standards," prepared and published by the City of Leawood, January 2001. No fewer than three copies of said publication shall be marked or stamped "Official Copy as Adopted by Ordinance No.1885 C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1847C, 2-7-00)

SECTION TWO: Repeal of Existing Sections. The existing Code § 13-102 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Publication: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 5th day of March, 2001.

APPROVED by the Mayor this 5th day of March, 2001.

[SEAL]

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1884

ORDINANCE APPROVING PLAN COMMISSION'S RECOMMENDATION TO ADOPT LEAWOOD COMPREHENSIVE PLAN, IN ACCORDANCE WITH K.S.A. § 12-747, FOR THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, in accordance with K.S.A. § 12-747(d), at least once a year, the City shall review or reconsider the Comprehensive Plan or any part thereof and may propose amendments or additions thereto; and

WHEREAS, the City's Plan Commission held a public hearing on November 28, 2000, to give residents an opportunity to voice their concerns and comments regarding amendments to the proposed Comprehensive Plan; and

WHEREAS, the Plan Commission, in accordance with K.S.A. § 12-747, adopted the 2000 Comprehensive Plan by Resolution on November 28, 2000, and recommended passage by the Governing Body; and

WHEREAS, the Plan Commission's recommendation was presented to the Leawood Governing Body at its January 2, 2001 and January 16, 2001 regular scheduled meetings and after hearing comments from citizens speaking in favor and in opposition to the submitted Plan, continued said recommendation to the February 20, 2001 regularly scheduled Governing Body meeting.

WHEREAS, the Plan was further discussed and reviewed by the Governing Body at the February 20, 2001, Governing Body meeting, and the Plan Commission's recommendation was adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That the Governing Body of the City of Leawood hereby accepts the Plan Commission's recommendation to adopt the 2000 Comprehensive Plan.

SECTION TWO: That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 20th day of February, 2001.

ADOPTED by the Governing Body this 20th day of February, 2001.

[SEAL]

Peggy Dunn, Mayor

P:\4COMPLAN.DOC

ORD1884

Publication Fees: $24.33

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1884--2/27/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
FEBRUARY 28, 2001

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

ORDINANCE NO. 1884

First published in The Legal Record, Tuesday, February 27, 2001.

ORDINANCE NO. 1884

ORDINANCE APPROVING PLAN COMMISSION'S RECOMMENDATION TO ADOPT LEAWOOD COMPREHENSIVE PLAN, IN ACCORDANCE WITH K.S.A. § 12-747, FOR THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, in accordance with K.S.A. § 12-747(d), at least once a year, the City shall review or reconsider the Comprehensive Plan or any part thereof and may propose amendments or additions thereto; and

WHEREAS, the City's Plan Commission held a public hearing on November 28, 2000, to give residents an opportunity to voice their concerns and comments regarding amendments to the proposed Comprehensive Plan; and

WHEREAS, the Plan Commission, in accordance with K.S.A. § 12-747, adopted the 2000 Comprehensive Plan by Resolution on November 28, 2000, and recommended passage by the Governing Body; and

WHEREAS, the Plan Commission's recommendation was presented to the Leawood Governing Body at its January 2, 2001 and January 16, 2001 regular scheduled meetings and after hearing comments from citizens speaking in favor and in opposition to the submitted Plan, continued said recommendation to the February 20, 2001 regularly scheduled Governing Body meeting.

WHEREAS, the Plan was further discussed and reviewed by the Governing Body at the February 20, 2001, Governing Body meeting, and the Plan Commission's recommendation was adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That the Governing Body of the City of Leawood hereby accepts the Plan Commission's recommendation to adopt the 2000 Comprehensive Plan.

SECTION TWO: That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 20th day of February, 2001.

ADOPTED by the Governing Body this 20th day of February, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

$24.33

ORDINANCE NO. 1883C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, SECTION 8 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO COMPENSATION, AND REPEALING EXISTING CODE SECTION 1-208.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 2, Section 8, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-208. COMPENSATION.

A. For the office of mayor, there is hereby established:

(1) a salary of $9,600 per year, payable at the rate of $800 per month; and

(2) a car allowance of $2,400 per year, payable at the rate of $200 per month, said sums shall be paid each month until the mayor's term of office shall cease, or he or she is removed from office, or for any reason shall leave office and his or her successor shall be qualified and take over the duties of the office of mayor. Said sums shall be paid from and after January 1, 2000.

B. For the office of councilmember, there is hereby established

(1) a salary of $5,000 per year, payable at the rate of $416.67 per month; and

(2) an expense allowance of $200.00 per month for the office of councilmember, said sum shall be paid each month until the councilmember's term of office shall cease, or he or she is removed from office or for any reason shall leave office. Such expense reimbursement shall be for mileage and all communication related technology and no further reimbursement for such expenses, specified in § 1-212 of this Code or otherwise, shall be allowed. Said salary amount shall be paid from and after January 1, 2000. Said expense allowance shall be paid from and after January 1, 2002.

(Ord. 1837C; 12-20-99)

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-208 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Publication: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: This ordinance shall become effective January 1, 2002.

PASSED by the Governing Body this 5th day of February, 2001.

APPROVED by the Mayor this 5th day of February, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1883C

Publication Fees: $34.46

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1883C--2/13/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
FEBRUARY 13, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$34.46

ORDINANCE NO. 1883C

First published in The Legal Record, Tuesday, February 13, 2001.

ORDINANCE NO. 1883C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, SECTION 8 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO COMPENSATION, AND REPEALING EXISTING CODE SECTION 1-208.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 2, Section 8, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-208. COMPENSATION.

A. For the office of mayor, there is hereby established:
   (1) a salary of $9,600 per year, payable at the rate of $800 per month; and
   (2) a car allowance of $2,400 per year, payable at the rate of $200 per month, said sums shall be paid each month until the mayor's term of office shall cease, or he or she is removed from office, or for any reason shall leave office and his or her successor shall be qualified and take over the duties of the office of mayor. Said sums shall be paid from and after January 1, 2000.

B. For the office of councilmember, there is hereby established
   (1) a salary of $5,000 per year, payable at the rate of $416.67 per month; and
   (2) an expense allowance of $200.00 per month for the office of councilmember, said sum shall be paid each month until the councilmember's term of office shall cease, or he or she is removed from office or for any reason shall leave office. Such expense reimbursement shall be for mileage and all communication related technology and no further reimbursement for such expenses, specified in § 1-212 of this Code or otherwise, shall be allowed. Said salary amount shall be paid from and after January 1, 2000. Said expense allowance shall be paid from and after January 1, 2002.

(Ord. 1837C; 12-20-99)

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-208 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Publication:—That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: This ordinance shall become effective January 1, 2002.

PASSED by the Governing Body this 5th day of February, 2001.

APPROVED by the Mayor this 5th day of February, 2001.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1882 C

AN ORDINANCE ADDING A NEW ARTICLE 5 TO CHAPTER VIII OF THE CITY OF LEAWOOD CODE 2000, RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901et seq., AND REPEALING EXISTING ORDINANCES OF THE CITY OF LEAWOOD, KANSAS IN CONFLICT HEREWITH.

WHEREAS, property damage caused by accidental fires, explosions or windstorms, if left abandoned and/or unrepaired, may constitute a hazardous and unsightly nuisance to the citizens of the City of Leawood, Kansas; and

WHEREAS, state law authorizes cities to pass an ordinance which establishes a fund in order to collect a portion of the insurance proceeds received whenever any building or structure in the City is damaged as a result of fire, explosion or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure; and

WHEREAS, pursuant to said law, if the damaged structure is repaired or removed to the satisfaction of the City, the money is returned to the insured party. If not, the money in the fund is used to make the necessary repairs; and

WHEREAS, the Governing Body finds that the establishment of said fund will protect the health, safety, and welfare of the citizens of the City of Leawood.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1: A new Section 8-501 is hereby added to read as follows:

8-501 SCOPE AND APPLICATION

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

Section 2: A new Section 8-502 is hereby added to read as follows:

8-502 LIEN CREATED

The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other

structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 3: A new Section 8-503 is hereby added to read as follows:

8-503 ENCUMBRANCES

Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.

Section 4: A new Section 8-504 is hereby added to read as follows:

8-504 PRO RATA BASIS

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 5: A new Section 8-505 is hereby added to read as follows:

8-505 PROCEDURE

(A) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city in an amount equal to the sum of 15 percent of the covered claim payment unless the neighborhood service director of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(B) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(C) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the neighborhood service director

shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

Section 6: A new Section 8-506 is hereby added to read as follows:

8-506 FUND CREATED; DEPOSIT OF MONEYS

The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7: A new Section 8-507 is hereby added to read as follows:

8-507 NEIGHBORHOOD SERVICE DIRECTOR; INVESTIGATION, REMOVAL OF STRUCTURE

(A) Upon receipt of moneys as provided for by this ordinance, the city finance director shall immediately notify the neighborhood service director of said receipt, and transmit all documentation received from the insurance company or companies to the neighborhood service director.

(B) Within 20 days of the receipt of said moneys, the neighborhood service director shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(C) Prior to the expiration of the 20 days established by subsection (b) of this section, the neighborhood service director shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(D) If the neighborhood service director has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city finance department.

(E) Upon notification to the city finance department by the neighborhood service director that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city finance director shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies.

Section 8: A new Section 8-508 is hereby added to read as follows:

8-508 REMOVAL OF STRUCTURE; EXCESS MONEYS

If the neighborhood service director has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

Section 9: **A new Section 8-509 is hereby added to read as follows:**

8-509 SAME; DISPOSITION OF FUNDS

If the neighborhood service director, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city finance department under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the neighborhood service director shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city under Section 5(a), the neighborhood service director shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Section 10 **A new Section 8-510 is hereby added to read as follows:**

8-510 EFFECT UPON INSURANCE POLICIES

This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Section 11: **A new Section 8-511 is hereby added to read as follows:**

8-511 INSURERS; LIABILITY

Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Section 12: **That this ordinance shall be construed as follows:**

INTERPRETATION

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

Section 13: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

Section 14: That the City Clerk is hereby directed to certify a copy of this ordinance to: Commissioner of Insurance, 420 S.W. 9th Street, Topeka, KS 66612, for filing.

PASSED by the Governing Body this 16th day of January, 2001.

APPROVED by the Mayor this 16th day of January, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

City of Leawood

4800 Town Center Drive • Leawood, Kansas 66211 • (913) 339-6700
(913) 339- 6781 Fax
(913) 339-6225 TDD

January 19, 2001

Kathleen Sebelius
Commissioner of Insurance
420 SW 9th St.
Topeka, Kansas 66612-1678

Dear Ms. Sebelius:

Enclosed for your records is a certified copy of Leawood's Ordinance No. 1882C which adds new sections to the Code relating to the establishment and implementation of an insurance proceeds fund pursuant to K.S.A. 40-3901 et seq.

Sincerely,

Martha Heizer

Martha Heizer
City Clerk

cc: Deb 9/28

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

September 20, 2000

Dear City Clerk:

In recent years, the League has codified your ordinances as part of a service we offer to cities. While performing a cross-check with the Kansas Insurance Department (KID), we found that KID has not been notified of your Insurance Proceeds Fund Ordinance, which was very likely included in your City Code. We recommend that you notify KID of your ordinance because this ensures that the ordinance works the way it was intended. The procedure to notify KID is very simple as explained below...

What is an Insurance Proceeds Fund? The fund was created and codified in your new City Code. Typically, it can be found in the Chapter entitled "Health and Welfare," although some older codes may have it in the Chapter entitled "Fire." K.S.A. 40-3901 *et seq* authorizes a city to establish this fund in order to collect up to 15% of the insurance proceeds received whenever any building or other structure is damaged as a result of fire, explosion, or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure.

Why Do This? In the event that the structure is not properly repaired, the money in the fund may be used to make the necessary repairs. If the damaged structure is repaired to the satisfaction of the city, the money is returned to the insured party.

To make sure that all insurance companies are aware of a city's fund, state law requires cities to notify the commissioner of insurance after adoption of the ordinance.

How To Notify The Insurance Commissioner. The process is simple. Simply mail (1) a copy of the ordinance adopting the Code and (2) a copy of the Insurance Proceeds Fund article (probably found at Article 7 of Chapter VIII of the City Code) to:

Insurance Commissioner
420 S.W. 9th Street
Topeka, KS 66612

If you have any questions, please contact the LKM Legal Department at (785) 354-9565.

Sincerely,

Sandy Jacquot

Sandy Jacquot
Director of Law

ORD1882C

Publication Fees: $82.02

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1882C--1/23/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

JANUARY 24, 2001

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$82.02

ORDINANCE NO. 1882 C

First published in The Legal Record, Tuesday, January 23, 2001.

ORDINANCE NO. 1882 C

AN ORDINANCE ADDING A NEW ARTICLE 5 TO CHAPTER VIII OF THE CITY OF LEAWOOD CODE 2000, RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901et seq., AND REPEALING EXISTING ORDINANCES OF THE CITY OF LEAWOOD, KANSAS IN CONFLICT HEREWITH.

WHEREAS, property damage caused by accidental fires, explosions or windstorms, if left abandoned and/or unrepaired, may constitute a hazardous and unsightly nuisance to the citizens of the City of Leawood, Kansas; and

WHEREAS, state law authorizes cities to pass an ordinance which establishes a fund in order to collect a portion of the insurance proceeds received whenever any building or structure in the City is damaged as a result of fire, explosion or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure; and

WHEREAS, pursuant to said law, if the damaged structure is repaired or removed to the satisfaction of the City, the money is returned to the insured party. If not, the money in the fund is used to make the necessary repairs; and

WHEREAS, the Governing Body finds that the establishment of said fund will protect the health, safety, and welfare of the citizens of the City of Leawood.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1: A new Section 8-501 is hereby added to read as follows:

8-501 SCOPE AND APPLICATION
The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

Section 2: A new Section 8-502 is hereby added to read as follows:

8-502 LIEN CREATED
The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 3: A new Section 8-503 is hereby added to read as follows:

8-503 ENCUMBRANCES
Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.

Section 4: A new Section 8-504 is hereby added to read as follows:

8-504 PRO RATA BASIS
Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 5: A new Section 8-505 is hereby added to read as follows:

8-505 PROCEDURE

(A) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city in an amount equal to the sum of 15 percent of the covered claim payment unless the neighborhood service director of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(B) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(C) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the neighborhood service director shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

Section 6: A new Section 8-506 is hereby added to read as follows:

8-506 FUND CREATED; DEPOSIT OF MONEYS
The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7: A new Section 8-507 is hereby added to read as follows:

8-507 NEIGHBORHOOD SERVICE DIRECTOR; INVESTIGATION, REMOVAL OF STRUCTURE

(A) Upon receipt of moneys as provided for by this ordinance, the city finance director shall immediately notify the neighborhood service director of said receipt, and transmit all documentation received from the insurance company or companies to the neighborhood service director.

(B) Within 20 days of the receipt of said moneys, the neighborhood service director shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(C) Prior to the expiration of the 20 days established by subsection (b) of this section, the neighborhood service director shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(D) If the neighborhood service director has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city finance department.

(E) Upon notification to the city finance department by the neighborhood service director that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city finance director shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies.

Section 8: A new Section 8-508 is hereby added to read as follows:

8-508 REMOVAL OF STRUCTURE; EXCESS MONEYS
If the neighborhood service director has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

Section 9: A new Section 8-509 is hereby added to read as follows:

8-509 SAME; DISPOSITION OF FUNDS
If the neighborhood service director, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city finance department under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the neighborhood service director shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city under Section 5(a), the neighborhood service director shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Section 10 A new Section 8-510 is hereby added to read as follows:

8-510 EFFECT UPON INSURANCE POLICIES
This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Section 11: A new Section 8-511 is hereby added to read as follows:

8-511 INSURERS; LIABILITY
Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Section 12: That this ordinance shall be construed as follows:

INTERPRETATION

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

Section 13: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

Section 14: That the City Clerk is hereby directed to certify a copy of this ordinance to: Commissioner of Insurance, 420 S.W. 9th Street, Topeka, KS 66612, for filing.

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PASSED by the Governing Body this 16th day of January, 2001.

APPROVED by the Mayor this 16th day of January, 2001.

(SEAL)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

NOTICE TO BIDDERS

First published in The Legal Record, Tuesday, January 23, 2001.

CITY OF LENEXA, KANSAS

NOTICE TO BIDDERS

Sealed Bids for "2001 Commercial Riding Mower" will be received by the City of Lenexa, Kansas at the office of the City Clerk, Lenexa City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas 66215, until 11:45 A. M. (local time) on February 12, 2001, at which time bids will be publicly opened and read aloud at the Lenexa City Hall. Any Bid received after the designated closing time will be returned to Bidder unopened.

All Bids shall be submitted in sealed envelopes addressed to the CITY OF LENEXA, KANSAS, ATTENTION: CITY CLERK, and marked "Bid for: 2001 Commercial Riding Mower." Copies of the Specifications, Bidding Documents and other Contract Documents are on file at the office of:

David Beard - Grounds Technician

13420 Oak Street

Lenexa, Kansas 66215

CONTRACTORS SHOULD READ AND BE FULLY FAMILIAR WITH ALL CONTRACT DOCUMENTS INCLUDING ADDENDA BEFORE SUBMITTING A BID. IN SUBMITTING A BID, THE BIDDER WARRANTS THAT HE/SHE HAS READ THE CONTRACT DOCUMENTS AND IS FULLY FAMILIAR THEREWITH AND HAS INCLUDED IN THE BID A SUM TO COVER THE COST OF ALL ITEMS OF THE WORK INCLUDING DELIVERY OF THE GOODS OR EQUIPMENT. DELIVERY SHALL BE AS INDICATED IN THE INSTRUCTIONS TO BIDDERS.

No oral, telegraphic, facsimile or telephonic Bids or Bid alterations or corrections will be considered.

The Bidder submitting the best and lowest responsible Bid, as determined by the City of Lenexa, Kansas, shall execute an Agreement on a form to be provided by the City. In the event the low Bidder is unable to execute the Agreement, for whatever reason, within the time provided in the Notice of Award, the City may annul the Notice of Award and the Bid Deposit may be forfeited. In addition, the City may exercise its legal prerogatives, including, but not limited to, enforcement of its rights as to specific performance.

The City reserves the right to accept or reject any and all Bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the Bidder if such requests are received in the office of the City Clerk, prior to the time and date for Bid opening. No Bidder may withdraw a Bid for a period of thirty (30) days after the date set for Bid opening.

ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF THE CITY BECAUSE OF SUCH REJECTION, AND THE FILING OF ANY BID IN RESPONSE TO THIS NOTICE SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THE CONDITIONS HEREIN.

Date: 1-22-01

CITY CLERK, CITY OF LENEXA, KANSAS

NOTICE TO BIDDERS

First published in The Legal Record, Tuesday, January 23, 2001.

2001 Crack Seal/Slurry Seal Program — January 2

NOTICE TO BIDDERS

CITY OF PRAIRIE VILLAGE, KANSAS
2001 CRACK SEAL/SLURRY SEAL PROGRAM

Sealed proposals will be received by the City Governing Body of Prairie Village, Kansas at the office of City Cl the City Hall, 7700 Mission Road, Prairie Village, Kansas, until 3:00 p.m. (CST) on Friday, February 9, 2001 proposals shall be submitted in the enclosed envelope stamped "Bid", sealed and addressed to the City Clerk marked "2001 CRACK SEAL/SLURRY SEAL PROGRAM." At the above stated time and place, all proposals be publicly opened and read aloud. Bids received after the designated closing time will be returned unopened.

Said project to include, but not limited to, 2001 CRACK SEAL/SLURRY SEAL PROGRAM removal and replacement of pavement, concrete curbs, sidewalks, and driveways throughout the City, including rel items. Approximate quantities of the major items are given below:

Description	Unit	Quantity
Crack Sealant	LBS.	57,000
Slurry Sealant	S.Y.	132,000

All equipment, material and workmanship must be in accordance with the Plans, Specifications and other Contra Documents in the Project Manual on file with the City Clerk, Joyce Hagen-Mundy, Prairie Village, Kansas.

Copies of the contract documents (Notice to Bidders, Instructions to Bidders, Proposal Form, Contract Form, Bon Forms) desired for bidding purposes may be obtained from the Consulting Engineer, The Larkin Group, Inc., 923 Ward Parkway, Suite 300, Kansas City, Missouri 64114.

Payment for Plans and Project Manual

A payment of $ 35.00 , nonrefundable, will be required for each complete set of Plans and Project Manual. Singl sheets may be obtained for a fee of $4.00 per sheet, nonrefundable.

Each proposal having a total value of $10,000 or more shall be accompanied by a certified or a cashier's check or Bi Bond drawn on an acceptable Bank, made payable, without condition, to the City of Prairie Village, Kansas, in a amount of not less than five (5%) percent of the total proposal cost.

Contractors must be KDOT pre-qualified to be eligible to submit bids. Each Contractor must indicate on the outside o his bid envelope his KDOT Vendor Number to certify that they are qualified in Work Class D. Information pertainin to pre-qualification can be obtained through the Kansas Department of Transportation's Bureau of Construction an Maintenance, telephone (913) 296-3576.

Non-resident corporations that are not already registered with the Kansas Secretary of State and all non-reside individuals and partnerships are required by law to register with the Director of Revenue, State Office Building Topeka, Kansas, and to pay a fee of Ten Dollars ($10.00) for each and every contract as a precedent to commencin work on the contract. For contracts in excess of Ten Thousand Dollars ($10,000), the foreign contractor shall file wi the Director of Revenue an acceptable bond in the amount of ten percent (10%) of the contract.

The Contractor shall not award subcontracts which total more than forty-five percent (45%) of the contract and sha perform, within its own organization, work amounting to not less than fifty-five percent (55%) of the total contra price.

All subcontractors shall be submitted and approved by the City prior to bid award.

No proposal may be withdrawn within a period of thirty (30) days from and after the date fixed for opening proposals.

The City reserves the right to reject any or all proposals; and to waive any informalities or irregularities therein.

PRE-BID MEETING: A pre-bid meeting will be held at Prairie Village Public Works, 3535 Somerset Drive, Prairi Village, Kansas at 1:00 p.m. (CST) on, Friday, January 26, 2001. Attendance at this meeting is not mandatory however, key aspects of the project will be discussed and representatives of the City and Engineer will be available t discuss the project.

CITY OF PRAIRIE VILLAGE
JOYCE HAGEN-MUNDY
CITY CLERK

THE LARKIN GROUP, INC.
9233 WARD PARKWAY, SUITE 300
KANSAS CITY, MISSOURI 64114
PH: 816/361-0440
FAX: 816/361-0045

CONTINUED FROM PRECEDING PAGE

PASSED by the Governing Body this 16th day of January, 2001.

APPROVED by the Mayor this 16th day of January, 2001.

(SEAL)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1881

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 151ST STREET AND MISSION ROAD (SUMMERTREE VILLAS, PHASE II), FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A tract of land in the Northeast quarter of Section 9, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northeast corner of said Northeast quarter; thence South 02° 04'56" East, along the East line of said Northeast quarter, a distance of 944.43 feet; thence South 87° 55'04" West, a distance of 1058.00 feet, to the Point of Beginning; thence South 56° 13'58" West, a distance of 49.76 feet; thence South 45° 27'16" West, a distance of 135.84 feet; thence South 61° 37'54" West, a distance of 79.96 feet; thence South 59° 09'02" West, a distance of 82.43 feet; thence South 59° 10'31" West, a distance of 265.46 feet; thence North 02° 03'53" West, a distance of 259.68 feet; thence Northeasterly, along a curve to the left, having a radius of 375.00 feet, a central angle of 15° 01'14", and whose initial tangent bearing is North 66° 56'22" East, a distance of 98.31 feet, to a point of compound curvature; thence Northeasterly, along a curve to the left having a radius of 175.00 feet, a central angle of 46° 04'54", a distance of 140.75 feet, to a point of tangency; thence North 05° 50'14" East, a distance of 103.80 feet, to a point of curvature; thence Northeasterly, along a curve to the right, having a radius of 225.00 feet, a central angle of 63° 36'12", a distance of 249.77 feet; thence South 28° 56'01" East, a distance of 435.49 feet, to the Point of Beginning, containing 175,065.19 square feet or 4.0189 acres, more or less

now zoned AG, is hereby rezoned to RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby

reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 18th day of December, 2000.

Approved by the Mayor the 18th day of December, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1881

Publication Fees: $32.40

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal *Record which is a newspaper printed in the State of Kansas*, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1881--12/~~26~~ 19/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
DECEMBER 20, 2000

Debra Valenti
Notary Public
Appt. Expires: 8/21/03

DEBRA VALENTI
Notary Public - State of Kansas

$32.40

ORDINANCE NO. 1881

First published in The Legal Record, Tuesday, December 19, 2000.

ORDINANCE NO. 1881

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 151ST STREET AND MISSION ROAD (SUMMERTREE VILLAS, PHASE II), FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A tract of land in the Northeast quarter of Section 9, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northeast corner of said Northeast quarter; thence South 02° 04'56" East, along the East line of said Northeast quarter, a distance of 944.43 feet; thence South 87° 55'04" West, a distance of 1058.00 feet, to the Point of Beginning; thence South 56° 13'58" West, a distance of 49.76 feet; thence South 45° 27'16" West, a distance of 135.84 feet; thence South 61° 37'54" West, a distance of 79.96 feet; thence South 59° 09'02" West, a distance of 82.43 feet; thence South 59° 10'31" West, a distance of 265.46 feet; thence North 02° 03'53" West, a distance of 259.68 feet; thence Northeasterly, along a curve to the left, having a radius of 375.00 feet, a central angle of 15° 01'14", and whose initial tangent bearing is North 66° 56'22" East, a distance of 98.31 feet, to a point of compound curvature; thence Northeasterly, along a curve to the left having a radius of 175.00 feet, a central angle of 46° 04'54", a distance of 140.75 feet, to a point of tangency; thence North 05° 50'14" East, a distance of 103.80 feet, to a point of curvature; thence Northeasterly, along a curve to the right, having a radius of 225.00 feet, a central angle of 63° 36'12", a distance of 249.77 feet; thence South 28° 56'01" East, a distance of 435.49 feet, to the Point of Beginning; containing 175,065.19 square feet or 4.0189 acres, more or less

now zoned AG, is hereby rezoned to RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby

reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 18th day of December, 2000.

Approved by the Mayor the 18th day of December, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn — Mayor

Attest:

Martha Heizer
Martha Heizer — City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE 1880 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 1-303, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO QUALIFICATIONS OF THE CITY ADMINISTRATOR.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 3, Section 3, of the code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-303 QUALIFICATIONS.

A. The person appointed to the office of City Administrator shall be a resident of Johnson County at the time of the effective date of such appointment, and shall be a graduate of an accredited university or college, qualifications and experience in financial and/or administrative fields.

B. In the event the office of City Administrator is vacant and an Interim Administrator is appointed to carry out the duties and responsibilities of the City Administrator, all qualifications set forth in Section 1-303, subsection A, shall be waived and shall not be applicable.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-303 is hereby repealed. [Prior Law: Ord. 642]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1880C

Publication Fees: $29.48

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) *times a year, has been so published* continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1880C--12/5/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
DECEMBER 6, 2000

Debra Valenti
Notary Public
Expires: 8/21/2003

DEBRA VALENTI
Notary Public - State of Kansas

$31.54

ORDINANCE NO. 1880 C

First published in The Legal Record, Tuesday, December 5, 2000.

ORDINANCE 1880 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 1-303, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO QUALIFICATIONS OF THE CITY ADMINISTRATOR.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 3, Section 3, of the code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-303 QUALIFICATIONS.

A. The person appointed to the office of City Administrator shall be a resident of Johnson County at the time of the effective date of such appointment, and shall be a graduate of an accredited university or college, qualifications and experience in financial and/or administrative fields.

B. In the event the office of City Administrator is vacant and an Interim Administrator is appointed to carry out the duties and responsibilities of the City Administrator, all qualifications set forth in Section 1-303, subsection A, shall be waived and shall not be applicable.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-303 is hereby repealed. [Prior Law: Ord. 642]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience..

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE 1879 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 4, SECTION 1-406, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO THE DUTIES OF THE CITY TREASURER.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 4, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-406. CITY TREASURER. The City Treasurer shall:

(a) Keep a full and accurate financial record of and for the city;
(b) Publish a quarterly financial statement;
(c) Be responsible for the receipt of all moneys belonging to the city;
(d) Deposit all public moneys and sign all checks of the city;
(e) Pay out the funds of the city upon warrant and checks properly signed by the mayor and city clerk;
(f) Have the purchasing authority up to and including $5,000 or less. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment. Purchases made by the City Treasurer, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body; and
(g) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-406 is hereby repealed. [K.S.A. § 10-803; K.S.A. § 12-1608]; [Prior Law Ord. 696; Code 2000]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\CB Updates\1-406A.doc
Rev. 11/30/00

ORD1879C

Publication Fees: $31.37

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a *period of more than one year prior* to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1879C--12/5/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
DECEMBER 8, 2000

Debra Valenti
Notary Public
Expires: 8/21/2003

DEBRA VALENTI
Notary Public - State of Kansas

$33.57

ORDINANCE 1879 C

First published in The Legal Record, Tuesday, December 5, 2000.

ORDINANCE 1879 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 4, SECTION 1-406, OF THE *CODE OF THE CITY OF LEAWOOD, KANSAS, 2000*, PERTAINING TO THE DUTIES OF THE CITY TREASURER.

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(c) Be responsible for the receipt of all moneys belonging to the city;
(d) Deposit all public moneys and sign all checks of the city;
(e) Pay out the funds of the city upon warrant and checks properly signed by the mayor and city clerk;
(f) Have the purchasing authority up to and including $5,000 or less. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment. Purchases made by the City Treasurer, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body; and
(g) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

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SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy J. Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1878

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $2,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1737, Ordinance No. 1742 and Resolution No. 1444.

(b) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(c) Acquisition, construction and equipping of a new public works building pursuant to K.S.A. 12-1736 et. seq. and Resolution No. 1532;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505; and

(e) Improvement and reimprovement of 151st Street between Nall Avenue and Mission Road pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(collectively, the "City Improvement Projects").

WHEREAS, the City has heretofore issued its Temporary Notes dated April 15, 2000, in the principal amount of $5,500,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of certain of the City Improvement Projects within the next six months in the amount of $800,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Two Million One Hundred Thousand Dollars ($2,100,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,300,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"),

including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 20th day of November, 2000.

APPROVED by the Mayor the 20th day of November, 2000.

(S E A L)

Peggy J. Dunn, Mayor

ATTEST:

Debra A. Harper, Deputy

~~Martha Heizer~~, City Clerk

Debra A. Harper

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1878

Publication Fees: $96.10

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1878--11/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
NOVEMBER 22, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$96.10

ORDINANCE NO. 1878

First published in The Legal Record, Tuesday, November 21, 2000.

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Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

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1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

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K. The Grantee, on the request of any applicant, shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given no fewer than fifteen (15) days' written notice from the applicant detailing the time and location of the moving operations and no fewer than twenty-four (24) hours' advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

L. Permission is hereby granted to the Grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of said City so as to prevent the branches of such trees from coming in contract with the facilities of the Grantee, all the said trimming to be done under the supervision and direction of any City official to whom said duties have been or may be delegated.

M. The City encourages the conservation of right of way by the sharing of space by all utilities. To the extent required by federal or state law, the Grantee shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Grantee. All said agreements and installments shall be subject to all existing and future ordinances and regulations of the City.

SECTION FOUR: INSPECTION OF RECORDS

The City shall have access to and the right to review all books, receipts, files, records, and documents of the Grantee necessary to verify the correctness of the statement of gross revenues and to correct the same, if found to be erroneous. If the statement of gross revenues is determined by both parties to be incorrect, then such payment shall be made upon a corrected statement.

SECTION FIVE: RIGHTS AND DUTIES

Upon expiration of this franchise, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture thereof, the Grantee shall dispose of its facilities on public property used in its said business within a reasonable time after such expiration and in compliance with all applicable City ordinances. It shall be the duty of the Grantee immediately upon such disposal to restore the right of way from which said facilities were disposed of to as good condition as the same were before said disposal was effected.

SECTION SIX: FORFEITURE AND GRANTS

In case of a material failure on the part of the Grantee, its successors and assigns, to comply with any of the provisions of this franchise, or if the Grantee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this franchise, the Grantee, its successors and assigns, shall forfeit all rights and privileges granted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings. Before the City proceeds to forfeit said grant, as in this section prescribed, it shall first serve a written notice upon the Grantee, setting forth in detail in such notice the neglect or failure complained of, and the Grantee shall have ninety (90) days thereafter in which to comply with the conditions of this grant and privilege. If at the end of such ninety-day (90) period the City deems that the conditions have not been complied with or substantially underway and continuously pursued and that the franchise is subject to cancellation by reason thereof, the City shall take action to repeal the franchise; setting out the grounds upon which said grant and privilege is to be canceled or terminated. If within thirty (30) days after the effective date of said action the Grantee shall not have instituted an action, in either the District Court of Johnson County, Kansas, or some other court of competent jurisdiction to determine whether or not the Grantee has violated the terms of this franchise and the same is subject to cancellation by reason thereof, this franchise shall be canceled and terminated at the end of such thirty-day (30) period. If within such thirty-day (30) period the Grantee does institute an action, as above provided, to determine whether or not the Grantee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty (30) days after such final judgment is rendered. Provided, however, that the failure of the Grantee to comply with any of the provisions of this franchise or the doing or causing to be done by the Grantee of anything prohibited by or in violation of the terms of this franchise, the same shall not be a ground for the forfeiture thereof when such act or omission on the part of the Grantee is due to any cause or delay beyond the control of the Grantee, its successors and assigns, or to bona fide legal proceedings.

SECTION SEVEN: CITY'S FAILURE TO ENFORCE

The City's failure to enforce and remedy any noncompliance by Grantee of the terms and conditions of this ordinance shall not constitute a waiver of the City's rights nor a waiver of Grantee's obligations as herein provided.

SECTION EIGHT: TERM AND TERMINATION DATE

This franchise shall be effective until May 7th, 2002. Thereafter, this franchise ordinance will renew for five [5] renewable one [1] year terms, unless either party notifies the other party of its intent to negotiate a new franchise ordinance, prior to one hundred twenty [120] days before the termination of the then current term.

SECTION NINE: COMPENSATION TO CITY

For the term of this franchise, Grantee shall pay to the City the sum equal to three and one half (3.5%) percent of gross revenues derived by Grantee from telecommunications services within the City. Payments shall be made on a monthly basis. Grantee shall pay the applicable fee to the City within 45 days after the last day of the applicable month. For the purpose of this Section "gross revenues" shall include all revenues derived from local exchange telecommunications services rendered wholly within the corporate limits of the City. For the purpose of this Section "gross revenues from local exchange telecommunication service" shall mean those revenues less uncollectible charges, derived from the following, whether wholesale or retail: (1) recurring local exchange service for commercial and residential customers, which includes basic exchange service, touch tone, optional calling features, and measured local calls; (2) recurring local exchange access line services for pay phone lines provided by the Grantee to all pay phone service providers; (3) local directory assistance revenue; (4) line status verification/busy interrupt revenue; (5) local operator assistance revenue; (6) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. Grantee and the City agree that all other revenues, including but not limited to revenues from extended area service, unbundled loops, nonregulated services, carrier and end-user access, long distance, and all other services not wholly local in nature are excluded from "gross revenues from local exchange telecommunications services." Grantee and the City agree that "gross revenues for local exchange telecommunication services" shall be reduced by bad debt expenses and uncollectible charges; and further agree that late charges shall not be included within "gross revenues from local exchange telecommunication services." If during the term of this franchise, Grantee offers additional services of a wholly local nature which if in existence at the effective date of this franchise would have been included within the definition of "gross revenues for local exchange telecommunications services," such services shall be included from the date of the offering of such service in the City for the remaining term of this franchise.

SECTION TEN: SALE OR TRANSFER OF GRANT OF FRANCHISE

Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Grantee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions of this ordinance and applicable state or federal law.

SECTION ELEVEN: CONDITIONS OF FRANCHISE

A. This contract, franchise, grant, and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

B. This franchise shall not be exclusive.

SECTION TWELVE: ACCEPTANCE OF TERMS

The Grantee shall have sixty (60) days after the final passage and approval of this ordinance to file with the City Clerk of the City of Lenexa its acceptance in writing of the provisions, terms, and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City of Lenexa and Grantee subject to the provisions of the laws of the State of Kansas.

SECTION THIRTEEN: INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

SECTION FOURTEEN: APPROVAL

This franchise ordinance shall be read in full at three (3) regular meetings of the Governing Body. Immediately after the final reading and passage by the Governing Body, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. It shall take effect and be in force sixty-one (61) days after the date of its final passage. If, pending the passage of this ordinance, or during the time between its final passage and the expiration of 60 days before the ordinance takes effect, a petition signed by a number of voters of the City of Lenexa equal to 20% of the qualified voters voting for mayor, or in case no mayor is elected then the commissioner or council member receiving the highest number of votes, at the last preceding city election, shall be presented to the Governing Body of the City of Lenexa asking that the franchise ordinance be submitted for adoption to popular vote, then the franchise ordinance shall become effective only if and when approved by a majority of the electors voting thereon.

PASSED by the Governing Body this 7th day of November 2000.

APPROVED by the Mayor this 7th day of November 2000.

Joan Bowman, Mayor

CITY OF LENEXA CORPORATE SEAL KANSAS [SEAL]

ATTEST:

Sandra Howell, Administration Director/City Clerk

APPROVED AS TO FORM:

Eric R. Arner, Assistant City Attorney

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 20th day of November, 2000.

APPROVED by the Mayor the 20th day of November, 2000.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORD1878

Publication Fees: $96.10

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1878--11/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
NOVEMBER 22, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$96.10

CONTINUED

ORDINANCE NO. 1878

First published in The Legal Record, Tuesday, November 21, 2000.

ORDINANCE NO. 1878

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $2,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1737, Ordinance No. 1742 and Resolution No. 1444.

(b) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(c) Acquisition, construction and equipping of a new public works building pursuant to K.S.A. 12-1736 et. seq. and Resolution No. 1532;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505; and

(e) Improvement and reimprovement of 151st Street between Nall Avenue and Mission Road pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(collectively, the "City Improvement Projects").

WHEREAS, the City has heretofore issued its Temporary Notes dated April 15, 2000, in the principal amount of $5,500,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all [illegible] completed at the date of maturity

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,300,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the [illegible] of Section 148 of the Code to

ORDINANCE NO. 1877.C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 6, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO THE DUTIES OF THE CITY ADMINISTRATOR.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 3, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-306. DUTIES. The city administrator shall:

(a) Be the chief administrative assistant to the mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by law of the State of Kansas, the city administrator shall coordinate and generally supervise the operation of all departments of the city;

(b) Be the purchasing agent for the city, and all purchases amounting to $5,000 or less shall be made under his or her general direction and supervision. Purchases exceeding$5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment; or any and all necessary expenditures to carry out the daily operations of the management of IRONHORSE Golf Club. Those emergency repairs or maintenance purchases shall be approved by the city administrator. All purchases made by the city administrator, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body;

(c) Be the budget officer of the city and with the assistance of all department heads shall assemble estimates of the financial needs and resources of the city for each ensuing year and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and an analysis to be proposed to the Governing Body for their final approval;

(d) Make monthly reports to the Governing Body relative to the financial condition of the city. Such reports shall show the financial condition of the city in relation to the budget;

(e) Prepare and present to the Governing Body an annual report of the city's affairs, including in such a report a summary of reports of department heads and such other reports as the Governing Body may require;

(f) Act as the personnel officer of the city and shall administer the Personnel Rules and Regulations Administrative Policy including making appropriate changes to the Policy to facilitate the efficient and effective daily operations of the City. The City Administrator shall report any amendment of or changes to the Personnel Rules and Regulations Administrative Policy to the Governing Body as soon as is practical. The City Administrator shall recommend an appropriate pay plan to the Governing Body and, after consultation with department heads, shall approve advancement and appropriate pay increases within the approved pay plan and the position classification system. The City

Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations and shall make recommendations to the Governing Body concerning the appointment and removal of department heads;

(g) Recommend to the Governing Body adoption of such measures as he or she may deem necessary or expedient for the health, safety, or welfare of the city or for the improvement of administrative services for the city;

(h) Submit to the Governing Body a proposed agenda for each council meeting at least 72 hours before the time of the regular council meeting;

(i) Work with all city commissions and committees to help coordinate the work of each;

(j) Attend all meetings of the Governing Body unless excused by the mayor;

(k) Supervise the preparation of all bid specifications for services and equipment, and receive sealed bids for presentation to the Governing Body;

(l) Coordinate federal and state programs which may have application to the city;

(m) Attend state and regional conferences and programs applicable to the office, and the business of the city, whenever such attendance is directed and approved by the Governing Body;

(n) Keep full and accurate records of all actions taken by him or her in the course of his or her duties, and he or she shall safely and properly keep all records and papers belonging to the city and entrusted to his or her care in accordance with federal and Kansas state statutes. All such records shall be and remain the property of the city and be open to inspection by the Governing Body at all times;

(o) Perform any and all other duties or functions prescribed by the Governing Body.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-306 is hereby repealed. [Prior law 1230 07/15/91; 1092]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1877C

Publication Fees: $44.59

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1877C--11/7/00

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

NOVEMBER 8, 2000

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$44.59

ORDINANCE NO. 1877 C

First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO. 1877 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 6, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO THE DUTIES OF THE CITY ADMINISTRATOR.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Chapter 1, Article 3, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-306. **DUTIES.** The city administrator shall:

(a) Be the chief administrative assistant to the mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by law of the State of Kansas, the city administrator shall coordinate and generally supervise the operation of all departments of the city;

(b) Be the purchasing agent for the city, and all purchases amounting to $5,000 or less shall be made under his or her general direction and supervision. Purchases exceeding$5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment; or any and all necessary expenditures to carry out the daily operations of the management of IRONHORSE Golf Club. Those emergency repairs or maintenance purchases shall be approved by the city administrator. All purchases made by the city administrator, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body;

(c) Be the budget officer of the city and with the assistance of all department heads shall assemble estimates of the financial needs and resources of the city for each ensuing year and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and an analysis to be proposed to the Governing Body for their final approval;

(d) Make monthly reports to the Governing Body relative to the financial condition of the city. Such reports shall show the financial condition of the city in relation to the budget;

(e) Prepare and present to the Governing Body an annual report of the city's affairs, including in such a report a summary of reports of department heads and such other reports as the Governing Body may require;

(f) Act as the personnel officer of the city and shall administer the Personnel Rules and Regulations Administrative Policy including making appropriate changes to the Policy to facilitate the efficient and effective daily operations of the City. The City Administrator shall report any amendment of or changes to the Personnel Rules and Regulations Administrative Policy to the Governing Body as soon as is practical. The City Administrator shall recommend an appropriate pay plan to the Governing Body and, after consultation with department heads, shall approve advancement and appropriate pay increases within the approved pay plan and the position classification system. The City Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations and shall make recommendations to the Governing Body concerning the appointment and removal of department heads;

(g) Recommend to the Governing Body adoption of such measures as he or she may deem necessary or expedient for the health, safety, or welfare of the city or for the improvement of administrative services for the city;

(h) Submit to the Governing Body a proposed agenda for each council meeting at least 72 hours before the time of the regular council meeting;

(i) Work with all city commissions and committees to help coordinate the work of each;

(j) Attend all meetings of the Governing Body unless excused by the mayor;

(k) Supervise the preparation of all bid specifications for services and equipment, and receive sealed bids for presentation to the Governing Body;

(l) Coordinate federal and state programs which may have application to the city;

(m) Attend state and regional conferences and programs applicable to the office, and the business of the city, whenever such attendance is directed and approved by the Governing Body;

(n) Keep full and accurate records of all actions taken by him or her in the course of his or her duties, and he or she shall safely and properly keep all records and papers belonging to the city and entrusted to his or her care in accordance with federal and Kansas state statutes. All such records shall be and remain the property of the city and be open to inspection by the Governing Body at all times;

(o) Perform any and all other duties or functions prescribed by the Governing Body.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-306 is hereby repealed. [Prior law 1230 07/15/91; 1092]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

[SEAL]

Peggy J. Dunn
Peggy Dunn, Mayor

ATTEST:

Martha Heizer
Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett
Patricia A. Bennett, City Attorney

(PUBLISHED IN THE LEGAL RECORD ON November 7, 2000)

ORDINANCE NO. 1876

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF $8,310,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2000-A, OF THE CITY OF LEAWOOD, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY BECOME DUE; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Leawood, Kansas (the "City"), is a city of the first class, created, organized and existing under the laws of the State of Kansas (the "State"); and

WHEREAS, pursuant to K.S.A. 12-685 *et seq.*, K.S.A. 12-6a01 *et seq.*, and K.S.A. 12-1301 et seq., each as amended, and other provisions of the laws of the State applicable thereto, by proceedings duly had, the Governing Body of the City has caused the following improvements to be made in the City:

(a) Construction of improvements to College Boulevard between Tomahawk Creek Parkway and El Monte Street including necessary appurtenances, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1484, as amended by Resolution No. 1530, and as further amended and restated by Resolution No. 1548 (the "College Boulevard Improvement");

(b) Construction of improvements to Mission Road from 103rd Street to I-435 including necessary appurtenances, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1204 (the "Mission Road Improvement");

(c) Construction of improvements to existing City parks pursuant to K.S.A. 12-1301 et seq., as authorized by Ordinance No. 1742 and an election held in the City on November 3, 1998 (the "City Parks Improvement");

(d) Construction of improvements to roads within the Normandy Place subdivision including necessary appurtenances, and certain storm water improvements therein, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1531 (the "Normandy Place Improvement"); and

(e) Construction of improvements and reimprovement of Lee Boulevard between 103rd Street and Mission Road within the City, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1807 (the "Lee Boulevard Improvement); and

WHEREAS, all legal requirements pertaining to the College Boulevard Improvement, the Mission Road Improvement, the City Parks Improvement, the Normandy Place Improvement and the Lee Boulevard Improvement (collectively, the "Series 2000 City Improvement Projects")

have been complied with, and the Governing Body of the City has found and determined and hereby finds and determines that the total cost of said City Improvement Projects including construction financing and related expenses is not less than $8,320,862.06 with $476,000 of the cost to be paid by the owners of the property within the City benefited by the College Boulevard Improvement and $315,000 of the cost to be paid by the owners of property within the City benefited by the Normandy Place Improvement and $7,529,862.06 of the cost to be paid by the City at-large; and

WHEREAS, owners of property benefitted by the Normandy Plaza Improvement have heretofore paid assessments in the amount of $10,862.06 and the Governing Body of the City is authorized by law to issue general obligation bonds of the City to finance the balance of the costs of the Series 2000 City Improvements Projects; and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and has awarded the sale of such bonds to George K. Baum & Company in association with Prudential Securities Incorporated, PaineWebber Incorporated, Edward D. Jones & Co., L.P., First Union National Bank, Fahnestock & Co Inc. and Cooper Malone McClain, Inc. (the "Original Purchaser"); and

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of $8,310,000 to finance the costs of the Series 2000 City Improvement Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms.

In addition to the words and terms defined in the recitals to this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings, unless some other meaning is plainly intended:

"Bond and Interest Fund" means the Bond and Interest Fund of the City for its general obligation bonds.

"Bond Resolution" means the resolution adopted by the Governing Body of the City contemporaneously herewith providing the terms and details of the Bonds authorized by this Ordinance.

"Bonds" means the City's General Obligation Improvement Bonds, Series 2000-A, authorized by this Ordinance in the aggregate principal amount of $8,310,000 and dated November 15, 2000.

"City" means the City of Leawood, Kansas.

"City Clerk" means the appointed and acting City Clerk or, in the City Clerk's absence, the appointed acting City Clerk of the City.

"City Treasurer" means the appointed and acting City Treasurer or, in the City Treasurer's absence, the appointed acting City Treasurer of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

"Mayor" means the elected and acting Mayor of the City or, in the Mayor's absence, the appointed acting Mayor of the City.

"Ordinance" means this Ordinance of the City authorizing the issuance of the Bonds.

"State" means the state of Kansas.

Section 2. Authorization of and Security for the Bonds. The Bonds are authorized and directed to be issued in the principal amount of $8,310,000, for the purpose of providing funds to finance the costs of the Series 2000 City Improvement Projects.

The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the College Boulevard Improvement and the Normandy Place Improvement and, if such special assessments shall not be so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City, and the balance of the principal and interest on the Bonds not payable first from such special assessments shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution adopted by the Governing Body of the City.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Bonds herein authorized and to procure the proper registration in the office of the City Clerk and in the office of the State Treasurer of the State of Kansas, and when so executed and registered, said Bonds shall be delivered to the Original Purchaser upon payment of the purchase price therefor as provided in the Bond Resolution.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Bonds shall be deposited with the City Treasurer and used and applied as provided in the Bond Resolution.

Section 6. Levy and Collection of Annual Tax. The Governing Body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting special assessments on property benefited by the College Boulevard Improvement and the Normandy Place Improvement, and to the extent of the City's portion of the cost of the Series 2000 City Improvement Projects and to the extent such special assessments shall not be so collected, by levying and collecting an annual tax upon all of the taxable tangible property, real and personal, within territorial limits of the City in the manner provided by law in amounts sufficient to pay the installments of principal and interest on the Bonds as the same accrue and become due and payable.

The taxes and assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, and the proceeds derived from such taxes and assessments shall be deposited in the Bond and Interest Fund.

If at any time taxes and assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal and interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and assessments are collected.

Section 7. Tax Covenants. The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds; (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for with the Bonds are issued; (4) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 8. Remedies. The provisions of this Ordinance and the Bond Resolution, including the covenants and agreements herein and therein contained, shall constitute a contract

between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

(SEAL)

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORD1876

Publication Fees: $92.75

The Legal Record
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CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1876--11/7/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
NOVEMBER 8, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$92.75

ORDINANCE NO. 1876

First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO. 1876

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF $8,310,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2000-A, OF THE CITY OF LEAWOOD, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY BECOME DUE; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Leawood, Kansas (the "City"), is a city of the first class, created, organized and existing under the laws of the State of Kansas (the "State"); and

WHEREAS, pursuant to K.S.A. 12-685 *et seq.*, K.S.A. 12-6a01 *et seq.*, and K.S.A. 12-1301 et seq., each as amended, and other provisions of the laws of the State applicable thereto, by proceedings duly had, the Governing Body of the City has caused the following improvements to be made in the City:

(a) Construction of improvements to College Boulevard between Tomahawk Creek Parkway and El Monte Street including necessary appurtenances, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1484, as amended by Resolution No. 1530, and as further amended and restated by Resolution No. 1548 (the "College Boulevard Improvement");

(b) Construction of improvements to Mission Road from 103rd Street to I-435 including necessary appurtenances, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1204 (the "Mission Road Improvement");

(c) Construction of improvements to existing City parks pursuant to K.S.A. 12-1301 et seq., as authorized by Ordinance No. 1742 and an election held in the City on November 3, 1998 (the "City Parks Improvement");

(d) Construction of improvements to roads within the Normandy Place subdivision including necessary appurtenances, and certain storm water improvements therein, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1531 (the "Normandy Place Improvement"); and

(e) Construction of improvements and reimprovement of Lee Boulevard between 103rd Street and Mission Road within the City, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1807 (the "Lee Boulevard Improvement); and

WHEREAS, all legal requirements pertaining to the College Boulevard Improvement, the Mission Road Improvement, the City Parks Improvement, the Normandy Place Improvement and the Lee Boulevard Improvement (collectively, the "Series 2000 City Improvement Projects") have been complied with, and the Governing Body of the City has found and determined and hereby finds and determines that the total cost of said City Improvement Projects including construction financing and related expenses is not less than $8,320,862.06 with $476,000 of the cost to be paid by the owners of the property within the City benefited by the College Boulevard Improvement and $315,000 of the cost to be paid by the owners of property within the City benefited by the Normandy Place Improvement and $7,529,862.06 of the cost to be paid by the City at-large; and

WHEREAS, owners of property benefitted by the Normandy Plaza Improvement have heretofore paid assessments in the amount of $10,862.06 and the Governing Body of the City is authorized by law to issue general obligation bonds of the City to finance the balance of the costs of the Series 2000 City Improvements Projects; and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and has awarded the sale of such bonds to George K. Baum & Company in association with Prudential Securities Incorporated, PaineWebber Incorporated, Edward D. Jones & Co., L.P., First Union National Bank, Fahnestock & Co Inc. and Cooper Malone McClain, Inc. (the "Original Purchaser"); and

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of $8,310,000 to finance the costs of the Series 2000 City Improvement Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms.

In addition to the words and terms defined in the recitals to this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings, unless some other meaning is plainly intended:

"Bond and Interest Fund" means the Bond and Interest Fund of the City for its general obligation bonds.

"Bond Resolution" means the resolution adopted by the Governing Body of the City contemporaneously herewith providing the terms and details of the Bonds authorized by this Ordinance.

"Bonds" means the City's General Obligation Improvement Bonds, Series 2000-A, authorized by this Ordinance in the aggregate principal amount of $8,310,000 and dated November 15, 2000.

"City" means the City of Leawood, Kansas.

"City Clerk" means the appointed and acting City Clerk or, in the City Clerk's absence, the appointed acting City Clerk of the City.

"City Treasurer" means the appointed and acting City Treasurer or, in the City Treasurer's absence, the appointed acting City Treasurer of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

"Mayor" means the elected and acting Mayor of the City or, in the Mayor's absence, the appointed acting Mayor of the City.

"Ordinance" means this Ordinance of the City authorizing the issuance of the Bonds.

"State" means the state of Kansas.

Section 2. Authorization of and Security for the Bonds. The Bonds are authorized and directed to be issued in the principal amount of $8,310,000, for the purpose of providing funds to finance the costs of the Series 2000 City Improvement Projects.

The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the College Boulevard Improvement and the Normandy Place Improvement and, if such special assessments shall not be so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City, and the balance of the principal and interest on the Bonds not payable first from such special assessments shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution adopted by the Governing Body of the City.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Bonds herein authorized and to procure the proper registration in the office of the City Clerk and in the office of the State Treasurer of the State of Kansas, and when so executed and registered, said Bonds shall be delivered to the Original Purchaser upon payment of the purchase price therefor as provided in the Bond Resolution.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Bonds shall be deposited with the City Treasurer and used and applied as provided in the Bond Resolution.

Section 6. Levy and Collection of Annual Tax. The Governing Body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting special assessments on property benefited by the College Boulevard Improvement and the Normandy Place Improvement, and to the extent of the City's portion of the cost of the Series 2000 City Improvement Projects and to the extent such special assessments shall not be so collected, by levying and collecting an annual tax upon all of the taxable tangible property, real and personal, within territorial limits of the City in the manner provided by law in amounts sufficient to pay the installments of principal and interest on the Bonds as the same accrue and become due and payable.

The taxes and assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, and the proceeds derived from such taxes and assessments shall be deposited in the Bond and Interest Fund.

If at any time taxes and assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal and interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and assessments are collected.

Section 7. Tax Covenants. The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds; (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for with the Bonds are issued; (4) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 8. Remedies. The provisions of this Ordinance and the Bond Resolution, including the covenants and agreements herein and therein contained, shall constitute a contract

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between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

(SEAL)

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

ORDINANCE NO. 1875

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING; AND REPEALING EXISTING SECTION.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be to provide for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the extension of streets and utilities that would be required for rezoning to a greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single family residential dwellings (detached).

2) Group Homes as defined herein.

3) *Railroads and public or quasi-public utilities including substations.*

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 50 feet

2) Side Setback: 25 feet

3) Rear Setback: 50 feet

4) Lot Area: 1 acre per dwelling (net)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Article 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required for development in this district.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by Resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) **Rubberized Asphalt Shingle**

1) **Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.**

2) **Required to be installed with sheet metal valleys and flashings.**

3) **Required to be installed with preformed ridge shingles.**

4) **Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.**

5) **Must use a minimum of five (5) color blend granules.**

6) **Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.**

7) **Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.**

8) **Required to be U.L. Class A fire rated material.**

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as R-1 Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned R-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body.

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) *Convents, when a part of a school or church complex*

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools, (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the R-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot shall be 30 feet.

2) Side Setback: 15 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 15 feet from any property line.

5) Lot Area: 15,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

8) Exception to Side Yard Setback: The Board of Zoning Appeals shall have the power to grant an exception to the required 15-foot Side Setback for additions to existing structures, upon a determination that such exception shall not cause adverse impact to the surrounding properties, and upon a finding of the following conditions:

a) The existing structure was legally constructed with a Side Setback of less than 15 feet; and

b) In no case shall the existing structure and any proposed addition be any closer than 10 feet to the property line; and

c) The proposed addition will be continuous and consistent with the existing side build line of the existing structure; and

d) The proposed addition shall not cause further encroachment than that of the existing structure.

Such exception shall require a public hearing. Notice of the hearing shall be published in the official city newspaper at the applicant's expense at least 20 days prior to the date of the hearing. Additionally, at least 10 days prior to the date of the hearing, the applicant shall mail notices regarding the application to all adjacent property owners and to the applicable homes association. Such mailed notice shall be by certified mail, return receipt requested, and shall be in the form of a letter explaining the proposed change. Failure to receive such notice shall not invalidate any subsequent action taken.

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed but end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) **Required to be installed with sheet metal valleys and flashings.**

3) **Required to be installed with preformed ridge shingles.**

4) **Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.**

5) ***Must use a minimum of five (5) color blend granules.***

6) **Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.**

7) **Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.**

8) **Required to be U.L. Class A fire rated material.**

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-3 RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned and developed as RP-1 Planned Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance.

B) Principal Permitted Uses: In District RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools, (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.

2) Side Setback: 12 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 12 feet from any property line.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded

except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed buttend of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-4 RP-2 (PLANNED TWO FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for duplexes (two family attached dwelling units) and other selected uses which are compatible with medium density residential character of this district. Property zoned RP-2 should be those tracts that correspond to the Medium Density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance. Two family dwellings which otherwise comply with the codes and ordinances of the City of Leawood may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownerships shall not constitute violation of the lot and yard requirements of this ordinance.

B) Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Two Family Dwellings

2) Group Homes as defined herein

3) Single Family dwellings when incorporated with a planned two family project

4) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-2 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 30 feet

2) Side Setback: 10 feet

3) Rear Setback: 30 feet

4) Lot Area: 6,000 square feet/dwelling unit

5) Lot Frontage: 100 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence or two family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles per unit in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence or two family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way)as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) **Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.**

7) **Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.**

8) **Required to be U.L. Class A fire rated material.**

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)

A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural purposes and to serve as a "holding" zone to prevent the premature development of large land acreages and of recently annexed land for which the most appropriate future use has not yet been determined. In order to promote these purposes, the regulations for this district allow a very limited range of uses so that the present

development character of the land may be maintained and future development options preserved pending comprehensive study and analysis of the area.

B) Principal Permitted Uses: In District AG no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Agricultural use, including the raising of field crops and fruit orchards, grazing and stabling of livestock, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.

2) Railroads and public or quasi-public utilities including substations.

3) Noncommercial nursery.

4) Single family dwelling located on a lot of 40 acres or more.

5) Group Homes as defined herein.

6) Oil and gas wells.

7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural recreation areas.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses:

F) Bulk Regulations:

1) Front Setback: 50 feet

2) Side Setback: 50 feet

3) Rear Setback: 50 feet

4) Lot Area: 40 acres per dwelling

5) Lot Frontage: 330 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: The agricultural district is exempt from landscaping and screening requirements.

J) Sewage Disposal: No permit for a dwelling or other building or land use which will produce impure wastewater shall be issued until a septic tank permit has been approved by the Governing Body after recommendation from the County Health Department or connection to sanitary sewer system.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of 5 color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at either exposed buttend of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) *Minimum thickness 3/16 inch measured at exposed butt end of overlap* creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

3) Farm homes shall be exempt from roofing requirements for maintenance purposes only. New construction, including additions, shall comply with these provisions.

L) Type of Construction -- Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 2/1 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, woos shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-16 RP-A5 (PLANNED rural density single FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A5 Planned Rural Density Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-A5 should be those tracts that correspond to the rural density residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A5 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Residential Dwellings (detached).

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A5 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

F) Bulk Regulations:

1) Front Setback: 150 feet

2) Side Setback: 35 feet

3) Rear Setback: 100 feet

4) Lot Area: 5 acres per dwelling (gross)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant or an acceptable septic tank system approved by Johnson county is required for development in the district.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt-end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

Section 2. *Existing Section Repealed. The existing Sections* 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 of the Leawood Development Ordinance are hereby repealed. (Prior law: Ord. Nos. 1822 & 1747)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 6th day of November, 2000.

Approved by the Mayor the 6th day of November, 2000.

(SEAL)

Peggy J. Dunn

Peggy J. Dunn Mayor

Attest:

Martha Heizer

Martha Heizer City Clerk

Approved as to form:

Patricia A. Bennett City Attorney

ORD1875

Publication Fees: $447.57

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1875--11/7/00

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

NOVEMBER 8, 2000

Debra Valenti

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$447.57

3) Model homes

F) Bulk Regulations:

1) Front Setback: 50 feet

2) Side Setback: 25 feet

3) Rear Setback: 50 feet

4) Lot Area: 1 acre per dwelling (net)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Article 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required for development in this district.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

ORDINANCE NO. 1875

First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO. 1875

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING; AND REPEALING EXISTING SECTION.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be to provide for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the extension of streets and utilities that would be required for rezoning to a greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single family residential dwellings (detached).

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by Resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

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h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as R-1 Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned R-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body.

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools. (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

b) In no case shall the existing structure and any proposed addition be any closer than 10 feet to the property line; and

c) The proposed addition will be continuous and consistent with the existing side build line of the existing structure; and

d) The proposed addition shall not cause further encroachment than that of the existing structure.

Such exception shall require a public hearing. Notice of the hearing shall be published in the official city newspaper at the applicant's expense at least 20 days prior to the date of the hearing. Additionally, at least 10 days prior to the date of the hearing, the applicant shall mail notices regarding the application to all adjacent property owners and to the applicable homes association. Such mailed notice shall be by certified mail, return receipt requested, and shall be in the form of a letter explaining the proposed change. Failure to receive such notice shall not invalidate any subsequent action taken.

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

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h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as R-1 Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned R-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body.

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools, (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the R-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot shall be 30 feet.

2) Side Setback: 15 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 15 feet from any property line.

5) Lot Area: 15,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

8) Exception to Side Yard Setback: The Board of Zoning Appeals shall have the power to grant an exception to the required 15-foot Side Setback for additions to existing structures, upon a determination that such exception shall not cause adverse impact to the surrounding properties, and upon a finding of the following conditions:

a) The existing structure was legally constructed with a Side Setback of less than 15 feet; and

b) In no case shall the existing structure and any proposed addition be any closer than 10 feet to the property line; and

c) The proposed addition will be continuous and consistent with the existing side build line of the existing structure; and

d) The proposed addition shall not cause further encroachment than that of the existing structure.

Such exception shall require a public hearing. Notice of the hearing shall be published in the official city newspaper at the applicant's expense at least 20 days prior to the date of the hearing. Additionally, at least 10 days prior to the date of the hearing, the applicant shall mail notices regarding the application to all adjacent property owners and to the applicable homes association. Such mailed notice shall be by certified mail, return receipt requested, and shall be in the form of a letter explaining the proposed change. Failure to receive such notice shall not invalidate any subsequent action taken.

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

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between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1875

First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO. 1875

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING; AND REPEALING EXISTING SECTION.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be to provide for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the extension of streets and utilities that would be required for rezoning to a greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single family residential dwellings (detached).

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 50 feet

2) Side Setback: 25 feet

3) Rear Setback: 50 feet

4) Lot Area: 1 acre per dwelling (net)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Article 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required for development in this district.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood panelling, wood fiber product panelling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by Resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

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f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

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C) Mahogany

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h) Rubberized Asphalt Shingle

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6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-3 RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned and developed as RP-1 Planned Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance.

B) Principal Permitted Uses: In District RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools, (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.

2) Side Setback: 12 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 12 feet from any property line.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded

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except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butteend of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

i) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-4 RP-2 (PLANNED TWO FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for duplexes (two family attached dwelling units) and other selected uses which are compatible with medium density residential character of this district. Property zoned RP-2 should be those tracts that correspond to the Medium Density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3-1 of this ordinance. Two family dwellings which otherwise comply with the codes and ordinances of the City of Leawood may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownerships shall not constitute violation of the lot and yard requirements of this ordinance.

B) Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Two Family Dwellings

2) Group Homes as defined herein

3) Single Family dwellings when incorporated with a planned two family project

4) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of the ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-2 District in accordance with Section 2-4-4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 30 feet

2) Side Setback: 10 feet

3) Rear Setback: 30 feet

4) Lot Area: 6,000 square feet/dwelling unit

5) Lot Frontage: 100 feet

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except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butteend of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-4 RP-2 (PLANNED TWO FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for duplexes (two family attached dwelling units) and other selected uses which are compatible with medium density residential character of this district. Property zoned RP-2 should be those tracts that correspond to the Medium Density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance. Two family dwellings which otherwise comply with the codes and ordinances of the City of Leawood may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownerships shall not constitute violation of the lot and yard requirements of this ordinance.

B) Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Two Family Dwellings

2) Group Homes as defined herein

3) Single Family dwellings when incorporated with a planned two family project

4) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-2 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 30 feet

2) Side Setback: 10 feet

3) Rear Setback: 30 feet

4) Lot Area: 6,000 square feet/dwelling unit

5) Lot Frontage: 100 feet

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f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed but end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-3 RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned and developed as RP-1 Planned Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance.

B) Principal Permitted Uses: In District RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields

b) Cemeteries

c) Community center buildings

d) Convents, when a part of a school or church complex

e) Fire station

f) Libraries

g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon

h) Parks, playgrounds and other recreational areas of municipal ownership

i) Police stations

j) Swimming pools, (municipal)

k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.

2) Side Setback: 12 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 12 feet from any property line.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded

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6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence or two family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles per unit in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence or two family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way)as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) *Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.*

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) *Other tile or roofing materials as specifically authorized by resolution of the Plan* Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)

A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural purposes and to serve as a "holding" zone to prevent the premature development of large land acreages and of recently annexed land for which the most appropriate future use has not yet been determined. In order to promote these purposes, the regulations for this district allow a very limited range of uses so that the present development character of the land may be maintained and future development options preserved pending comprehensive study and analysis of the area.

B) *Principal Permitted Uses: In District AG no building, structure, land or premises shall be used or hereafter* erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Agricultural use, including the raising of field crops and fruit orchards, grazing and stabling of livestock, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.

2) Railroads and public or quasi-public utilities including substations.

3) Noncommercial nursery.

4) Single family dwelling located on a lot of 40 acres or more.

5) Group Homes as defined herein.

6) Oil and gas wells.

7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural recreation areas.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses:

F) *Bulk Regulations:*

1) Front Setback: 50 feet

2) Side Setback: 50 feet

3) Rear Setback: 50 feet

4) Lot Area: 40 acres per dwelling

5) Lot Frontage: 330 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

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I) Landscaping and Screening Requirements: The agricultural district is exempt from landscaping and screening requirements.

J) Sewage Disposal: No permit for a dwelling or other building or land use which will produce impure wastewater shall be issued until a septic tank permit has been approved by the Governing Body after recommendation from the County Health Department or connection to sanitary sewer system.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of 5 color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at either exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

construction, including additions, shall comply with these provisions.

L) Type of Construction – Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 2/1 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-16 RP-A5 (PLANNED rural density single FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A5 Planned Rural Density Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-A5 should be those tracts that correspond to the rural density residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A5 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Residential Dwellings (detached)

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A5 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

F) Bulk Regulations:

1) Front Setback: 150 feet

2) Side Setback: 35 feet

3) Rear Setback: 100 feet

4) Lot Area: 5 acres per dwelling (gross)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant or an acceptable septic tank system approved by Johnson county is required for development in the district.

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I) Landscaping and Screening Requirements: The agricultural district is exempt from landscaping and screening requirements.

J) Sewage Disposal: No permit for a dwelling or other building or land use which will produce impure wastewater shall be issued until a septic tank permit has been approved by the Governing Body after recommendation from the County Health Department or connection to sanitary sewer system.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of 5 color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at either exposed buttend of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

3) Farm homes shall be exempt from roofing requirements for maintenance purposes only. New construction, including additions, shall comply with these provisions.

L) Type of Construction – Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 2/1 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-16 RP-A5 (PLANNED rural density single FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-A5 Planned Rural Density Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-A5 should be those tracts that correspond to the rural density residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A5 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Residential Dwellings (detached).

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.

5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A5 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

F) Bulk Regulations:

1) Front Setback: 150 feet

2) Side Setback: 35 feet

3) Rear Setback: 100 feet

4) Lot Area: 5 acres per dwelling (gross)

5) Lot Frontage: 150 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant or an acceptable septic tank system approved by Johnson county is required for development in the district.

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6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence or two family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles per unit in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence or two family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way)as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) *Other tile or roofing materials as specifically authorized by resolution of the Plan* Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)

A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural purposes and to serve as a "holding" zone to prevent the premature development of large land acreages and of recently annexed land for which the most appropriate future use has not yet been determined. In order to promote these purposes, the regulations for this district allow a very limited range of uses so that the present development character of the land may be maintained and future development options preserved pending comprehensive study and analysis of the area.

B) Principal Permitted Uses: In District AG no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Agricultural use, including the raising of field crops and fruit orchards, grazing and stabling of livestock, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.

2) Railroads and public or quasi-public utilities including substations.

3) Noncommercial nursery.

4) Single family dwelling located on a lot of 40 acres or more.

5) Group Homes as defined herein.

6) Oil and gas wells.

7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural recreation areas.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses:

F) Bulk Regulations:

1) Front Setback: 50 feet

2) Side Setback: 50 feet

3) Rear Setback: 50 feet

4) Lot Area: 40 acres per dwelling

5) Lot Frontage: 330 feet

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

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K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:

a) Wood Shingles: Number 1 or 2 grade

b) Wood Shakes:

1) Number 1 or 2 grade

2) Minimum 1/2 inch thickness measured at butt

c) Slate

d) Clay Tile

e) Concrete Tile

f) *Other Tile*

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

A) Chestnut

B) Driftwood

C) Mahogany

D) Terra Cotta

E) Granite

F) Charcoal

G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt-end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

Section 2. Existing Section Repealed. The existing Sections 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 of the Leawood Development Ordinance are hereby repealed. (Prior law: Ord. Nos. 1822 & 1747)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 6th day of November, 2000.

Approved by the Mayor the 6th day of November 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

Approved as to form:

Patricia A. Bennett — City Attorney

ORDINANCE NO. 1874

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE STORMWATER IMPROVEMENT PROJECT LOCATED AT 84TH STREET AND STATE LINE ROAD IN LEAWOOD, JOHNSON COUNTY, KANSAS. [SMAC PROJECT # DB-04-015]

WHEREAS, the Governing Body of the City of Leawood, Kansas did by Resolution No. 1554 declare the necessity for, and authorize a survey and description of lands or interests therein to be condemned by the City for the following:

> Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

WHEREAS, said survey and description was prepared, filed with the City Clerk and is maintained at the Leawood City Hall.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: It is hereby authorized and provided that the lands or interests therein hereafter described be acquired for the following improvement:

> Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

Tract No.: **1**
Owner: **Lynn A. Sheek and Kimberly L. Sheek**
Address: 2007 W. 84th Street
Leawood, KS 66206

Situs: 2007 W. 84th Street
Leawood, KS 66206

Property Description: That part of Lots 4 and 9 lying Westerly of the following line: Beginning at a point on the Northerly line of Lot 9 which is 24 feet, as measured on said Northerly line, Southeast of the Northwest corner running thence Southwesterly in a straight line to a point on the Southerly line of said Lot 4 shich is 10 feet West, as measured on said Southerly line, of the Southeast corner of said Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision in the City of Leawood, Kansas, Johnson County, Kansas, according to the recorded plat therof.

Mortgage Holder: In Volume 4306, Page 150, to Commerce Mortgage Corporation, 1000 Walnut, Suite # 200, Kansas City, MO 64106

Easement Holders: A 30-foot front building restriction on Lot 4, and a 35-foot front building line restriction on that part of the premises in Lot 9, as shown on the recorded plat of BRIGHTWATER ADDITION, in Plat Book 24, Page 13.

Declaration of restrictions and easements recorded in Misc. Book 44, Page 63; Amended in Misc. Book 45, page 345.

Homes Association Declaration recorded in Misc. Book 69, Page 568.

Leawood sewer agreement in Misc. Book 30, Page 333; Misc. Book 53, Page 490; Misc. Book 58, Page 263; Misc. Book 65, Page 425; Misc. Book 84, Page 127; Misc. Book 93, Page 22; Misc. Book 95, Page 439; Misc. Book 123, Page 38; Misc. Book 143, Page 533; Misc. Book 164, Page 532, and Misc. Book 164, Page 534.

Easement to Kansas City Power & Light Company recorded in Misc. Book 123, Page 146.

Easement to Kansas City Power & Light Company recorded in Misc. Book 82, Page 80.

Public Utility Easement recorded in Misc. Book 123, Page 32.

Sewer rights-of-way provided in the Sanitary Sewer Connection Agreement recorded in Misc. Book 123, Page 38.

Restrictions and easements recorded in Misc. Book 123, Page 32.

Easement to Kansas City Power & Light Co. recorded in Volume 1116, Page 389.

TEMPORARY CONSTRUCTION EASEMENT

All those parts of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

Commencing at the most Northerly corner of said Lot 4; thence South 27°44'50" East, along the Northeast line of said Lot 4, a distance of 29.33 feet to the True Point of Beginning; thence continuing South 27°44'50" East, along the Northeast line of said Lot 4, a distance of 12.06 feet; thence South 52°21'32" West a distance of 68.32 feet; thence South 04°09'15" West a distance of 12.80 feet; thence South 46°25'50" West a distance of 11.34 feet; thence North 06°54'44" East a distance of 15.23 feet; thence North 24°25'33" East a distance of 19.55 feet; thence North 49°59'26" East a distance of 62.30 feet to the True Point of Beginning, containing 827 square feet, more or less.

And

Commencing at the Southwest corner of said Lot 4; thence South 81°49'50" East, along the South line of said Lot 4, a distance of 20.57 feet to the True Point of Beginning; thence continuing South 81°49'50" East, along the South line of said Lot 4, a distance of 14.51 feet; thence North 19°00'43" East a distance of 38.29 feet; thence North 04°09'15" East a distance of 39.16 feet; thence North 43°26'02" West a distance of 8.48 feet to a point on the West line of said Lot 4; thence South 30°02'50" West, along the West line of said Lot 4, a distance of 6.01 feet to a point that is North 30°02'50" East a distance of 82.28 feet from the Southwest corner of said Lot 4; thence South 06°54'44° West a distance of 41.24 feet; thence South 25°32'44° West a distance of 36.81 feet to the True Point of Beginning, containing 868 square feet, more or less.

PERMANENT RIGHT-OF-WAY GRANT

All that part of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

Commencing at the most Northerly corner of said Lot 4; thence South 46°21'35" West, along the Northwest line of said Lot 4, a distance of 110.62 feet to the West line of said Lot 4; thence South 14°57'43" East, along the West line of said Lot 4, a distance of 22.37 feet to the True Point of Beginning; thence continuing South 14°57'43" East, along the West line of said Lot 4, a distance of 16.00 feet to an angle point in the West line of said Lot 4; thence South 83°43'38" East, along the West line of said Lot 4, a distance of 24.24 feet; thence North 06°54'44" East a distance of 19.44

feet; thence South 87°46'02" West a distance of 30.59 feet to the True Point of Beginning, containing 474 square feet, more or less.

PERMANENT DRAINAGE EASEMENT

All that part of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

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and

Beginning at the Southwest corner of said Lot 4; thence North 30°02'50" East, along the West line of said Lot 4, a distance of 82.28 feet; thence South 06°54'44" West a distance of 41.24 feet; thence South 25°32'44" West a distance of 36.81 feet to a point on the South line of said Lot 4; thence North 81°49'50" West, along the South line of said Lot 4, a distance of 20.57 feet to the Point of Beginning, containing 1,028 square feet, more or less.

SECTION TWO: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq., the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinbefore described.

SECTION THREE: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

APPROVED by the Governing Body this 16th day of October, 2000.

SIGNED by the Mayor this 16th day of October, 2000.

Peggy Dunn

Peggy Dunn, Mayor

P:\84 State Line\41smac.doc
CT4-00-001

[SEAL]

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\84 State Line\41smac.doc
CT4-00-001

ORD1874

Publication Fees: $77.90

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1874--10/17/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
OCTOBER 17, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$77.90

ORDINANCE NO. 1874

First published in The Legal Record, Tuesday, October 17, 2000.

ORDINANCE NO. 1874

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE STORMWATER IMPROVEMENT PROJECT LOCATED AT 84TH STREET AND STATE LINE ROAD IN LEAWOOD, JOHNSON COUNTY, KANSAS. [SMAC PROJECT # DB-04-015]

WHEREAS, the Governing Body of the City of Leawood, Kansas did by Resolution No. 1554 declare the necessity for, and authorize a survey and description of lands or interests therein to be condemned by the City for the following:

> Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

WHEREAS, said survey and description was prepared, filed with the City Clerk and is maintained at the Leawood City Hall.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: It is hereby authorized and provided that the lands or interests therein hereafter described be acquired for the following improvement:

> Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

Tract No.: 1
Owner: Lynn A. Sheek and Kimberly L. Sheek
Address: 2007 W. 84th Street
Leawood, KS 66206

Situs: 2007 W. 84th Street
Leawood, KS 66206

Property Description: That part of Lots 4 and 9 lying Westerly of the following line: Beginning at a point on the Northerly line of Lot 9 which is 24 feet, as measured on said Northerly line, Southeast of the Northwest corner running thence Southwesterly in a straight line to a point on the Southerly line of said Lot 4 shich is 10 feet West, as measured on said Southerly line, of the Southeast corner of said Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision in the City of Leawood, Kansas, Johnson County, Kansas, according to the recorded plat therof.

Mortgage Holder: In Volume 4306, Page 150, to Commerce Mortgage Corporation, 1000 Walnut, Suite # 200, Kansas City, MO 64106

Easement Holders: A 30-foot front building restriction on Lot 4, and a 35-foot front building line restriction on that part of the premises in Lot 9, as shown on the recorded plat of BRIGHTWATER ADDITION, in Plat Book 24, Page 13.

Declaration of restrictions and easements recorded in Misc. Book 44, Page 63; Amended in Misc. Book 45, page 345.

Homes Association Declaration recorded in Misc. Book 69, Page 568.

Leawood sewer agreement in Misc. Book 30, Page 333; Misc. Book 53, Page 490; Misc. Book 58, Page 263; Misc. Book 65, Page 425; Misc. Book 84, Page 127; Misc. Book 93, Page 22; Misc. Book 95, Page 439; Misc. Book 123, Page 38; Misc. Book 143, Page 533; Misc. Book 164, Page 532, and Misc. Book 164, Page 534.

Easement to Kansas City Power & Light Company recorded in Misc. Book 123, Page 146.

Easement to Kansas City Power & Light Company recorded in Misc. Book 82, Page 80.

Public Utility Easement recorded in Misc. Book 123, Page 32.

Sewer rights-of-way provided in the Sanitary Sewer Connection Agreement recorded in Misc. Book 123, Page 38.

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And

Commencing at the Southwest corner of said Lot 4; thence South 81°49'50" East, along the South line of said Lot 4, a distance of 20.57 feet to the True Point of Beginning; thence continuing South 81°49'50" East, along the South line of said Lot 4, a distance of 14.51 feet; thence North 19°00'43" East a distance of 38.29 feet; thence North 04°09'15" East a distance of 39.16 feet; thence North 43°26'02" West a distance of 8.48 feet to a point on the West line of said Lot 4; thence South 30°02'50" West, along the West line of said Lot 4, a distance of 6.01 feet to a point that is North 30°02'50" East a distance of 82.28 feet from the Southwest corner of said Lot 4; thence South 06°54'44" West a distance of 41.24 feet; thence South 25°32'44" West a distance of 36.81 feet to the True Point of Beginning, containing 868 square feet, more or less.

PERMANENT RIGHT-OF-WAY GRANT

All that part of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

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and

Beginning at the Southwest corner of said Lot 4; thence North 30°02'50" East, along the West line of said Lot 4, a distance of 82.28 feet; thence South 06°54'44" West a distance of 41.24 feet; thence South 25°32'44" West a distance of 36.81 feet to a point on the South line of said Lot 4; thence North 81°49'50" West, along the South line of said Lot 4, a distance of 20.57 feet to the Point of Beginning, containing 1,028 square feet, more or less.

SECTION TWO: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq., the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinbefore described.

SECTION THREE: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

APPROVED by the Governing Body this 16th day of October, 2000.

SIGNED by the Mayor this 16th day of October, 2000.

Peggy J. Dunn
Peggy Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer
Martha Heizer, City Clerk

APPROVED AS TO FORM:

/s/ Patricia A. Bennett
Patricia A. Bennett, City Attorney

ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164.

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

> Improvement, Reimprovement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

ASSESSMENT ROLL

Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

Property I.D.#	Ownership	Assessment
HP89000000 0T0C1	Mary M. Mann	$5,431.03
HP89000000 0T0C2	Harold & Ruth L. Katz	$5,431.03
HP89000000 0T0C3	Sharon Cowden	$5,431.03
HP89000000 0T0D	Patricia M. Rasmussen	$5,431.03
HP89000000 0T0D1	Constance Phillips	$5,431.03
HP89000000 0T0D2	Herbert Adler	$5,431.03
HP89000000 0T0D6	Irwin D. & Barbara S. Rein	$5,431.03
HP890000TA 0T07	Thelma W. Fox	$5,431.03
HP890000TA 0T08	Dianna T. Sheffield	$5,431.03
HP890000TA 0T09	Clifford L. Rovelto & Eileen M. Fergus	$5,431.03
HP890000TA 0U01	Brent L. Grams	$5,431.03
HP890000TA 0U02	Avery Murray	$5,431.03
HP890000TA 0U03	Mary Patricia Hughes	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TA 0U04	Robert D. & Marilyn C. Rafferty	$5,431.03
HP890000TA 0U05	Frederick A. & Carol K. Watts	$5,431.03
HP890000TA 0U06	Edmund W. & Dorothy C. Wollmuth	$5,431.03
HP890000TC 0009	Kurt & Margrit Vetsch	$5,431.03
HP890000TC 0010	Kenneth F. & Janice M. Stewart	$5,431.03
HP890000TC 0011	Jane A. Peal	$5,431.03
HP890000TC 0012A	Howard J. Ellfeldt	$5,431.03
HP890000TC U05A	Mark A. & Patricia A. Lester	$5,431.03
HP890000TC U05B	William G. & Patricia J. Samuels	$5,431.03
HP890000TC U06A	Robert S. Selby & Nancy L. Dietrich	$5,431.03
HP890000TC U06B	Louis F. & Mary C. Drees	$5,431.03
HP890000TC 0U07	John S. & Roberta M. Saper	$5,431.03
HP890000TC U08A	Dorothy U. & Eric L. Hansen	$5,431.03
HP890000TC U08B	William W. & Carol L. Chiles	$5,431.03
HP890000TC U08C	Johnson County Bank ETAL	$5,431.03
HP890000TC U08D	Gladys G. Miller	$5,431.03
HP890000TC U010	Elvira C. Migliazzo	$5,431.03
HP890000TC U011	Courtney Y. Sloan & Gloria Fischer Dobbs	$5,431.03
HP890000TC U012	Martha A. Horan	$5,431.03
HP890000TD 0010	L. Keith & Shirley A. Ellenberger	$5,431.03
HP890000TD 0011	Stanley A. & Marlene P. Katz	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TD 0012	Ronald L. & Joan F. Minda	$5,431.03
HP890000TD 0013	Charles L. JR & Mary J. Walden	$5,431.03
HP890000TD 0014	Irving B. & Shirley A. Malashock	$5,431.03
HP890000TD 0015	Stephen E. & Maren H. Paoletti	$5,431.03
HP890000TD 0016	Charles E. Pappas	$5,431.03
HP890000TD 0017	William J. & Sharon M. Hill	$5,431.03
HP890000TD 0018	Thomas H. & Grace W. Nicholl	$5,431.03
HP890000TD 0024	Nancy N. & Jerry G. Cornelison	$5,431.03
HP890000TD U28A	V. Darlene Williams	$5,431.03
HP890000TD U28B	Robert H. & Jeanette Wayne	$5,431.03
HP890000TH 0001	Thomas F. & Alice A. Lewinsohn	$5,431.03
HP890000TH 0002	Labe & Gloria Asner	$5,431.03
HP890000TH 0003	James K. & Lynelle R. Richardson	$5,431.03
HP890000TH 0004	Heinz K. Wehner	$5,431.03
HP890000TH 0005	Jill P. Liechty	$5,431.03
HP890000TH 0006	Jerry Fogel	$5,431.03
HP890000TH 0007	Joseph P. & Etta F. Vowells	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TH 0008	Joanne M. Vandervort	$5,431.03
HP890000TH 0009	Larry C. Emery & Mary G. Siero	$5,431.03
HP890000TH 0010	Martha M. Burge	$5,431.03
HP890000TH 0011	J. Paul Moore	$5,431.03
HP890000TH 0012	Barbara J. Eichhorn	$5,431.03
HP890100TD 0019A	John C. & Geneva D. McKeever	$5,431.03
HP890100TD 0019B	Gregory J. Orman	$5,431.03

3157295

STATE OF KANSAS
COUNTY OF JOHNSON } SS
FILED FOR RECORD
2000 SEP -6 A 9:15.0
SARA F. ULLMANN
REGISTER OF DEEDS

$18.00

ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164.

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WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

1800 Ck

ret: City of Leawood
4800 Town Center Dr
Leawood KS 66211

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TAKE EFFECT.

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Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(S E A L)

Peggy Dunn

Peggy Dunn Mayor

Attest:

Martha Heizer

Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

BOOK 6689 PAGE 948

~~BOOK 6689 PAGE 947~~

ASSESSMENT ROLL

Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

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HP890000TD 0010	L. Keith & Shirley A. Ellenberger	$5,431.03
HP890000TD 0011	Stanley A. & Marlene P. Katz	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TD 0012	Ronald L. & Joan F. Minda	$5,431.03
HP890000TD 0013	Charles L. JR & Mary J. Walden	$5,431.03
HP890000TD 0014	Irving B. & Shirley A. Malashock	$5,431.03
HP890000TD 0015	Stephen E. & Maren H. Paoletti	$5,431.03
HP890000TD 0016	Charles E. Pappas	$5,431.03
HP890000TD 0017	William J. & Sharon M. Hill	$5,431.03
HP890000TD 0018	Thomas H. & Grace W. Nicholl	$5,431.03
HP890000TD 0024	Nancy N. & Jerry G. Cornelison	$5,431.03
HP890000TD U28A	V. Darlene Williams	$5,431.03
HP890000TD U28B	Robert H. & Jeanette Wayne	$5,431.03
HP890000TH 0001	Thomas F. & Alice A. Lewinsohn	$5,431.03
HP890000TH 0002	Labe & Gloria Asner	$5,431.03
HP890000TH 0003	James K. & Lynelle R. Richardson	$5,431.03
HP890000TH 0004	Heinz K. Wehner	$5,431.03
HP890000TH 0005	Jill P. Liechty	$5,431.03
HP890000TH 0006	Jerry Fogel	$5,431.03
HP890000TH 0007	Joseph P. & Etta F. Vowells	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TH 0008	Joanne M. Vandervort	$5,431.03
HP890000TH 0009	Larry C. Emery & Mary G. Siero	$5,431.03
HP890000TH 0010	Martha M. Burge	$5,431.03
HP890000TH 0011	J. Paul Moore	$5,431.03
HP890000TH 0012	Barbara J. Eichhorn	$5,431.03
HP890100TD 0019A	John C. & Geneva D. McKeever	$5,431.03
HP890100TD 0019B	Gregory J. Orman	$5,431.03

CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1873 with associated 4-page road improvement assessment roll as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 22nd day of August, 2000.

(S E A L)

Martha Heizer

Martha Heizer

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1873

Publication Fees: $94.64

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1873--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$94.64

ORDINANCE NO. 1873

First published in The Legal Record, Tuesday, August 22, 2000.

- ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164.

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

> Improvement, Reimprovement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(S E A L)

Peggy Dunn
Peggy Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

CONTINUED ON NEXT PAGE

CONTINUED FROM PRECEDING PAGE

ASSESSMENT ROLL

Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

Property I.D.#	Ownership	Assessment
HP890000000 0T0C1	Mary M. Mann	$5,431.03
HP890000000 0T0C2	Harold & Ruth L. Katz	$5,431.03
HP890000000 0T0C3	Sharon Cowden	$5,431.03
HP890000000 0T0D	Patricia M. Rasmussen	$5,431.03
HP890000000 0T0D1	Constance Phillips	$5,431.03
HP890000000 0T0D2	Herbert Adler	$5,431.03
HP890000000 0T0D6	Irwin D. & Barbara S. Rein	$5,431.03
HP890000TA 0T07	Thelma W. Fox	$5,431.03
HP890000TA 0T08	Dianna T. Sheffield	$5,431.03
HP890000TA 0T09	Clifford L. Rovelto & Eileen M. Fergus	$5,431.03
HP890000TA 0U01	Brent L. Grams	$5,431.03
HP890000TA 0U02	Avery Murray	$5,431.03
HP890000TA 0U03	Mary Patricia Hughes	$5,431.03

Property I.D.#	Ownership	Assessment
HP890000TA 0U04	Robert D. & Marilyn C. Rafferty	$5,431.03
HP890000TA 0U05	Frederick A. & Carol K. Watts	$5,431.03
HP890000TA 0U06	Edmund W. & Dorothy C. Wollmuth	$5,431.03
HP890000TC 0009	Kurt & Margrit Vetsch	$5,431.03
HP890000TC 0010	Kenneth F. & Janice M. Stewart	$5,431.03
HP890000TC 0011	Jane A. Peal	$5,431.03
HP890000TC 0012A	Howard J. Ellfeldt	$5,431.03
HP890000TC U05A	Mark A. & Patricia A. Lester	$5,431.03
HP890000TC U05B	William G. & Patricia J. Samuels	$5,431.03
HP890000TC U06A	Robert S. Selby & Nancy L. Dietrich	$5,431.03
HP890000TC U06B	Louis F. & Mary C. Drees	$5,431.03
HP890000TC 0U07	John S. & Roberta M. Saper	$5,431.03
HP890000TC U08A	Dorothy U. & Eric L. Hansen	$5,431.03
HP890000TC U08B	William W. & Carol L. Chiles	$5,431.03
HP890000TC U08C	Johnson County Bank ETAL	$5,431.03
HP890000TC U08D	Gladys G. Miller	$5,431.03
HP890000TC U010	Elvira C. Migliazzo	$5,431.03
HP890000TC U011	Courtney Y. Sloan & Gloria Fischer Dobbs	$5,431.03
HP890000TC U012	Martha A. Horan	$5,431.03
HP890000TD 0010	L. Keith & Shirley A. Ellenberger	$5,431.03
HP890000TD 0011	Stanley A. & Marlene P. Katz	$5,431.03

CONTINUED FROM PRECEDING PAGE

ASSESSMENT ROLL

Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

Property I.D.#	Ownership	Assessment
HP89000000 0T0C1	Mary M. Mann	$5,431.03
HP89000000 0T0C2	Harold & Ruth L. Katz	$5,431.03
HP89000000 0T0C3	Sharon Cowden	$5,431.03
HP89000000 0T0D	Patricia M. Rasmussen	$5,431.03
HP89000000 0T0D1	Constance Phillips	$5,431.03
HP89000000 0T0D2	Herbert Adler	$5,431.03
HP89000000 0T0D6	Irwin D. & Barbara S. Rein	$5,431.03
HP890000TA 0T07	Thelma W. Fox	$5,431.03
HP890000TA 0T08	Dianna T. Sheffield	$5,431.03
HP890000TA 0T09	Clifford L. Rovello & Eileen M. Fergus	$5,431.03
HP890000TA 0U01	Brent L. Grams	$5,431.03
HP890000TA 0U02	Avery Murray	$5,431.03
HP890000TA 0U03	Mary Patricia Hughes	$5,431.03
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HP890100TD 0019A	John C. & Geneva D. McKerver	$5,431.03
HP890100TD 0019B	Gregory J. Ormsa	$5,431.03

PUBLIC HEARING

First published in The Legal Record, Tuesday, August 22, 2000.

NOTICE OF PUBLIC HEARING BEFORE
THE CITY OF MISSION
PLANNING COMMISSION

YOU ARE HEREBY NOTIFIED THAT Application 00-17 has been filed in the office of the City Clerk by McCluggage Van Sickle & Perry, agent for KFC Restaurant, Mission, Kansas, for a Special Use Permit in accordance with zoning regulations provided under the Zoning Ordinance of the City of Mission, Kansas.

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 12, RANGE 25, AND ALL OF LOTS 6 AND 7, BLOCK 1, WEST MISSION, A SUBDIVISION OF LAND IN MISSION, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 7; THENCE S 00° 02' 13" W, ALONG THE WEST LINE OF SAID LOT 7 A DISTANCE OF 5.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF JOHNSON DRIVE SAID POINT, POINT ALSO BEING THE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE S 89° 57' 47" E ALONG SAID SOUTH RIGHT-OF-WAY LINE TO A POINT ON THE EAST LINE OF SAID LOT 6, A DISTANCE OF 185.00 FEET; THENCE S 00° 02' 13" W ALONG THE EAST LINE OF SAID LOT 6 AND THE PROLONGATION THEREOF A DISTANCE OF 196.00 FEET; THENCE N 89° 57' 47" W, A DISTANCE OF 185.00 FEET; THENCE N 00° 02' 13" E ALONG THE WEST LINE OF SAID LOT 7, AND THE PROLONGATION THEREOF A DISTANCE OF 196.00 FEET TO THE POINT OF BEGINNING. CONTAINS 36,260 SQUARE FEET OR 0.83 ACRES, MORE OR LESS. END OF DESCRIPTION.

There will be a Planning Commission meeting to consider the application on Monday, September 11, 2000, at 7:30 PM at the Mission City Hall, 6090 Woodson, Mission, Kansas, at which time all interested persons will be heard.

The application is on file in the City Clerk and Public Works Offices.

Barbara J. Sharp
Barbara J. Sharp
Planning Commission Secretary
City of Mission, Kansas

PUBLIC HEARING

First published in The Legal Record, Tuesday, August 22, 2000.

K.S.A. 12-2007
Notice of Public Hearing

LENEXA TO HOLD CABLE TELEVISION FRANCHISE PUBLIC HEARING ON SEPTEMBER 5, 2000

The Lenexa City Council will hold a public hearing on Tuesday, September 5th at 7:30 p.m. in the Council Chambers of Lenexa City Hall, 12350 W. 87th Street Parkway, to receive public comments regarding a proposed cable television franchise with Digital Access Corporation of Kansas.

For further information, please call
Eric Arner at 913-477-7623.

ORDINANCE NO. 1873

First published in The Legal Record, Tuesday, August 22, 2000

ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164.

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

Improvement, Reimprovement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn
Peggy Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

CONTINUED ON NEXT PAGE

ORDINANCE NO. 1872

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 108).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

> Improving College Boulevard from Thomahawk Creek Parkway to El Monte Street in the City of Leawood including concrete curb and gutter, asphalt pavement, storm drainage, sidewalks, street lighting, and such other appurtenances as are required pursuant to the final plans approved by the City of Leawood; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $491,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $476,000.00 and such property, within the improvement district abutting the proposed improvement shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

3157296

STATE OF KANSAS
COUNTY OF JOHNSON]SS
FILED FOR RECORD

#22.00

2000 SEP -6 A 9:15

SARA F. ULLMANN
REGISTER OF DEEDS

ORDINANCE NO. 1872

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 108).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

> Improving College Boulevard from Thomahawk Creek Parkway to El Monte Street in the City of Leawood including concrete curb and gutter, asphalt pavement, storm drainage, sidewalks, street lighting, and such other appurtenances as are required pursuant to the final plans approved by the City of Leawood; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $491,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $476,000.00 and such property, within the improvement district abutting the proposed improvement shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

ret: City of Leawood

2200 CK

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

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Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(S E A L)

Peggy Dunn
Peggy Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM: _____, City Attorney
Patricia A. Bennett

ASSESSMENT ROLL

Improvement District
College Boulevard
Project 108

Assessment Factor:
Actual Cost of Improvement.
Equal Shares per lot.

Property I.D.#	Ownership	Assessment
HP97600000 0001	Village Associates, LLC	$ 2,921.45
HP97600000 0002	Village Associates, LLC	$ 2,921.45
HP97600000 0003	Village Associates, LLC	$ 2,921.45
HP97600000 0004	Village Associates, LLC	$ 2,921.45
HP97600000 0005	Village Associates, LLC	$ 2,921.45
HP97600000 0006	Village Associates, LLC	$ 2,921.45
HP97600000 0007	Village Associates, LLC	$ 2,921.45
HP97600000 0008	Village Associates, LLC	$ 2,921.45
HP97600000 0009	Village Associates, LLC	$ 2,921.45
HP97600000 0010	Village Associates, LLC	$ 2,921.45
HP97600000 0011	Village Associates, LLC	$ 2,921.45
HP97600000 0012	Village Associates, LLC	$ 2,921.45
HP97600000 0013	Village Associates, LLC	$ 2,921.45
HP97600000 0014	Village Associates, LLC	$ 2,921.45
HP97600000 0015	Village Associates, LLC	$ 2,921.45

HP97600000 0016	Village Associats, LLC	$ 2,921.45
HP97600000 0017	John Slatinsky	$ 2,921.45
HP97600000 0018	Village Associates, LLC	$ 2,921.45
HP97600000 0019	Village Associates, LLC	$ 2,921.45
HP97600000 0020	Village Associates, LLC	$ 2,921.45
HP97600000 0021	Margritier Construction, Inc.	$ 2,921.45
HP97600000 0022	Ambassador Construction Company	$ 2,921.45
HP97600000 0023	Grewal, Inc.	$ 2,921.45
HP97600000 0024	Grewal, Inc.	$ 2,921.45
HP97600000 0025	Koehler Building Company, Inc.	$ 2,921.45
HP97600000 0026	Village Associates, LLC	$ 2,921.45
HP97600000 0027	Village Associates, LLC	$ 2,921.45
HP97600000 0028	Village Associates, LLC	$ 2,921.45
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CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1872 with associated 6-page improvement district assessment roll as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 22nd day of August, 2000.

(S E A L)

Martha Heizer

Martha Heizer

ASSESSMENT ROLL

Improvement District
College Boulevard
Project 108

Assessment Factor:
Actual Cost of Improvement.
Equal Shares per lot.

Property I.D.#	Ownership	Assessment
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ORD1872

Publication Fees: $137.05

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1872--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$137.05

ORDINANCE NO. 1872

First published in The Legal Record, Tuesday, August 22, 2000.

ORDINANCE NO. 1872

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 108).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

> Improving College Boulevard from Thomahawk Creek Parkway to El Monte Street in the City of Leawood including concrete curb and gutter, asphalt pavement, storm drainage, sidewalks, street lighting, and such other appurtenances as are required pursuant to the final plans approved by the City of Leawood; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $491,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $476,000.00 and such property, within the improvement district abutting the proposed improvement shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(S E A L)

Peggy Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM: Patricia A. Bennett, City Attorney

ASSESSMENT ROLL

Improvement District
College Boulevard
Project 108

Assessment Factor:
Actual Cost of Improvement.
Equal Shares per lot.

Property I.D.#	Ownership	Assessment
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RESOLUTION NO. 1562

First published in The Legal Record, Tuesday, August 22, 2000.

RESOLUTION NO. 1562

A RESOLUTION ADOPTING THE FISCAL YEAR 2001 ANNUAL BUDGET FOR THE CITY OF LEAWOOD, KANSAS.

WHEREAS, the Governing Body discussed the Fiscal Year 2001 annual budget at its August 7, 2000 City Council meeting; and

WHEREAS, a public hearing was conducted at the August 7, 2000, City Council meeting to consider the Fiscal Year 2001 annual budget for the City of Leawood, Kansas, pursuant to K.S.A. § 79-2929; and

WHEREAS, the Governing Body desires the Fiscal Year 2001 annual budget to be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: The City of Leawood, Kansas, a municipal corporation, does hereby adopt the Fiscal Year 2001 annual budget as presented at its August 7, 2000, City Council meeting.

SECTION TWO: This resolution shall become effective upon passage and publication by the Governing Body.

PASSED by the Governing Body this 21st day of August, 2000.

APPROVED by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

Economics Put Air Service For Smaller Kansas Cities In Doubt, Says FAA

CONTINUED FROM PAGE 1

of Great Lakes Aviation, a regional airline that offers a flight between Salina and Denver.

"We expected a cost increase," Voss said, "but the size of it surprised everyone."

Many smaller carriers that serve smaller cities get a federal subsidy. With costs going from 13.8 cents per seat-mile to 24 cents, Voss said, the subsidy is vital –but every year it gets trimmed by Congress.

A story in last Wednesday's edition of USA Today said Mesa Air Group, which owns Wichita-based Air Midwest, is cutting its use of 19-seat turboprops because of the high cost of federally mandated improvements to the planes.

According to the story, Mesa Air Group will get rid of up to half of its 19-seat turboprops during the next two years and will eliminate rural routes in the Southwest.

Many of those planes will be replaced by 36-seat turboprops. And, Air Midwest president Greg Stephens said at Friday's session, those planes will fly only routes where the chance of a full plane is high – and the Salina-to-Kansas City route isn't one of

enced aviators and contributed to the pilot shortage, Voss and Stephens said.

"What we're seeing is just the tip of the iceberg of what is going to happen," Voss said.

Also, Voss and Stephens said, it's nearly impossible to keep pilots from moving up to larger airlines.

Garvey said the transition to higher standards "was a challenge for us all." Airlines and regulators must work together to find flexible rules, she said.

The mandatory retirement rule "has always been contentious," she said. The FAA is in the third and final phase of a Senate-requested study of the rule.

Small air charter businesses are also feeling a crunch, a McPherson businessman said Friday.

Two months ago, John Britting, owner of MAC Air Corp., a fixed-base operator in McPherson, sold his charter license and six planes. He said he knows of three others who have gotten out of the business.

Britting is still in the airplane maintenance and flight instruction business.

He said he had come to expect a pilot

ORDINANCE NO. 1871

First published in The Legal Record, Tuesday, August 22, 2000.

ORDINANCE NO. 1871

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF LEAWOOD, KANSAS, AUTHORIZED BY CONTRACT PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Leawood, Kansas:

SECTION ONE: The codification of ordinances of the City of Leawood, Kansas, authorized by contract and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Leawood, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Leawood, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

SECTION TWO: All ordinances and parts of ordinances of a general nature passed prior to August 21, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Leawood, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

SECTION THREE: In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

(a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
(b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
(c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
(d) Ordinances naming or changing the names of streets, avenues and boulevards;
(e) Ordinances authorizing or directing public improvements to be made;
(f) Ordinances creating districts for public improvements of whatsoever kind or nature;
(g) Ordinances levying general taxes;
(h) Ordinances levying special assessments or taxes;
(i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
(j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
(k) Ordinances authorizing contracts;
(l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
(m) Ordinances relating to compensation of officials, officers and employees of the city;
(n) Ordinances of a temporary nature;
(o) Ordinances contained in the Leawood Development Ordinance and any amendments thereto;
(p) Ordinances contained in the Amendment of Leawood Development Ordinance and any amendments thereto.

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

SECTION FOUR: The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

SECTION FIVE: The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Leawood, Kansas, 2000," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

SECTION SEVEN: This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Leawood, Kansas, 2000," as provided in K.S.A. 12-3015.

PASSED by the Governing Body this 21st day of August, 2000.

SIGNED by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

CONTINUED FROM PRECEDING PAGE

HP97600000 0038	Mark Bolling Homes	$ 2,921.45
HP97600000 0039	Village Associates, LLC	$ 2,921.45
HP97600000 0040	Village Associates, LLC	$ 2,921.45
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HP97650000 0013	Village Associates, LLC	$ 2,921.45
HP97650000 0014	Woods Lot Venture	$ 2,921.45
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HP97650000 0017	Woods Lot Venture	$ 2,921.45
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HP97650000 0022	Woods Lot Venture	$ 2,921.45
HP97650000 0023	Woods Lot Venture	$ 2,921.45
HP97650000 0024	John Slatinsky	$ 2,921.45
HP97650000 0025	Woods Lot Venture	$ 2,921.45
HP97650000 0026	Woods Lot Venture	$ 2,921.45
HP97650000 0027	Woods Lot Venture	$ 2,921.45
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HP97650000 0033	Woods Lot Venture	$ 2,921.45
HP97650000 0034	Tom French	$ 2,921.45
HP97650000 0035	Woods Lot Venture	$ 2,921.45
HP97650000 0036	Woods Lot Venture	$ 2,921.45
HP97650000 0037	Rick Standard & Company	$ 2,921.45
HP97650000 0038	Woods Lot Venture	$ 2,921.45
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HP97650000 0060	Village Associates, LLC	$ 2,921.45
HP97650000 0061	Village Associates, LLC	$ 2,921.45
HP97960000 0001	Karin Merrill College, LLC	$65,583.06
HP97970000 0001	Kansas City Orthopaedic Institute Medical ETAL	$59,842.94

ORDINANCE NO. 1871

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF LEAWOOD, KANSAS, AUTHORIZED BY CONTRACT PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Leawood, Kansas:

SECTION ONE: The codification of ordinances of the City of Leawood, Kansas, authorized by contract and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Leawood, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Leawood, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

SECTION TWO: All ordinances and parts of ordinances of a general nature passed prior to August 21, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Leawood, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

SECTION THREE: In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

(a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
(b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
(c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
(d) Ordinances naming or changing the names of streets, avenues and boulevards;
(e) Ordinances authorizing or directing public improvements to be made;
(f) Ordinances creating districts for public improvements of whatsoever kind or nature;
(g) Ordinances levying general taxes;
(h) Ordinances levying special assessments or taxes;
(i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
(j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
(k) Ordinances authorizing contracts;
(l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
(m) Ordinances relating to compensation of officials, officers and employees of the city:
(n) Ordinances of a temporary nature;

(o) Ordinances contained in the Leawood Development Ordinance and any amendments thereto;

(p) Ordinances contained in the Amendment of Leawood Development Ordinance and any amendments thereto.

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

SECTION FOUR: The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

SECTION FIVE: The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Leawood, Kansas, 2000," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

SECTION SEVEN: This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Leawood, Kansas, 2000," as provided in K.S.A. 12-3015.

PASSED by the Governing Body this 21st day of August, 2000.

SIGNED by the Mayor this 21st day of August, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

P:\Code Book\41adopt.doc

Original

CERTIFICATE OF THE CITY CLERK

Office of the City
City of Leawood, Kansas

STATE OF KANSAS)
) *ss.*
JOHNSON COUNTY)

I, Martha Heizer, City Clerk of the City of Leawood, Johnson County, Kansas do hereby certify that said city is a city of the first class of the mayor-council form of government under the statutes of Kansas; that this codification of the general ordinances of said city and the publication thereof in book form were ordered and authorized by the governing body by contract and in accordance therewith is entitled the "Code of the City of Leawood, Kansas, 2000," that said codification was adopted as the "Code of the City of Leawood, Kansas, 2000," by the governing body by Ordinance No. 1871 passed on the 21st day of August, 2000, as authorized by Section 12-3015 of the Kansas Statutes Annotated; that said Ordinance No. 1871 and said codification of general ordinances as contained in this volume will take effect upon publication of 10 or more copies; that the publication of 10 copies of this code and adoptive Ordinance No. 1871 constitute due passage of this code and all general ordinances contained therein; that the codification and adoptive Ordinance No. 1871 as contained herein are true and correct copies; and that said publication imports absolute verity and is to be received in evidence in all courts and places without further proof as provided by 12-3015 of the Kansas Statutes Annotated.

I further certify that the "Code of the City of Leawood, Kansas, 2000," and the matter therein contained will take effect upon publication and be in force from and after August 22, 2000.

Witness my hand and the seal of the City of Leawood, Kansas, at my office in Leawood, Kansas, this 21st day of August, 2000.

Martha Heizer

Martha Heizer, City Clerk
City of Leawood, Kansas

(S E A L)

ORD1871

Publication Fees: $35.49

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1871--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$35.49

ORDINANCE NO. 1871

First published in The Legal Record, Tuesday, August 22, 2000.

ORDINANCE NO. 1871

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF LEAWOOD, KANSAS, AUTHORIZED BY CONTRACT PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Leawood, Kansas:

SECTION ONE: The codification of ordinances of the City of Leawood, Kansas, authorized by contract and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Leawood, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Leawood, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

SECTION TWO: All ordinances and parts of ordinances of a general nature passed prior to August 21, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Leawood, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

SECTION THREE: In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

(a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
(b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
(c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
(d) Ordinances naming or changing the names of streets, avenues and boulevards;
(e) Ordinances authorizing or directing public improvements to be made;
(f) Ordinances creating districts for public improvements of whatsoever kind or nature;
(g) Ordinances levying general taxes;
(h) Ordinances levying special assessments or taxes;
(i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
(j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
(k) Ordinances authorizing contracts;
(l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
(m) Ordinances relating to compensation of officials, officers and employees of the city;
(n) Ordinances of a temporary nature;
(o) Ordinances contained in the Leawood Development Ordinance and any amendments thereto;
(p) Ordinances contained in the Amendment of Leawood Development Ordinance and any amendments thereto.

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

SECTION FOUR: The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

SECTION FIVE: The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Leawood, Kansas, 2000," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

SECTION SEVEN: This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Leawood, Kansas, 2000," as provided in K.S.A. 12-3015.

PASSED by the Governing Body this 21st day of August, 2000.

SIGNED by the Mayor this 21st day of August, 2000.

Peggy Dunn

Peggy Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1870

AN ORDINANCE REZONING PROPERTY (MISSION FARMS CLUBHOUSE) LOCATED AT APPROXIMATELY 105TH STREET AND HOWE FROM SD-CR (SPECIAL DEVELOPMENT-COMMERCIAL RETAIL) TO RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the NW1/4 of Section 10, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW1/4 of said Section 10; thence S 0° 25'05" W, along the West line of the NW1/4 of said Section 10, a distance of 2303.64 feet, to a point on the centerline of 105th Street, as now established; thence S 89° 34'55" E, along the centerline of said 105th Street, a distance of 262.82 feet, to a point of curvature; thence Easterly and Northeasterly, along the centerline of said 105th Street, said line being a curve to the left having a radius of 489 feet, and a central angle of 22° 10'13", a distance of 189.22 feet, to a point of reverse curvature; thence Northeasterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 6° 24'08" and whose initial tangent bearing is N 68° 14'52" E, a distance of 76.88 feet, to the true point of beginning of subject tract; thence continuing Northeasterly and Easterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 11° 20'12" and whose initial tangent bearing is N 74° 38'59" E, a distance of 148.74 feet, to a point of tangency; thence N 86° 59'12" E, along the centerline of said 105th Street, a distance of 14.30 feet; thence S 0° 32'03" W, a distance of 233.55 feet; thence N 89° 27'57" W, a distance of 80 feet; thence N 0° 32'03" E, a distance of 34 feet; thence N 89° 27'57" W, a distance of 80 feet; thence N 0° 32'03" E, a distance of 173.72 feet, to the true point of beginning of subject tract, all subject to that part thereof dedicated for street purposes, containing 0.760 gross acres, more or less

now zoned SD-CR, is hereby rezoned RP-A.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood,

Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000

Approved by the Mayor the 17th day of July, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1870

Publication Fees: $35.49

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1870--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$35.49

ORDINANCE NO. 1870

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1870

AN ORDINANCE REZONING PROPERTY (MISSION FARMS CLUBHOUSE) LOCATED AT APPROXIMATELY 105TH STREET AND HOWE FROM SD-CR (SPECIAL DEVELOPMENT-COMMERCIAL RETAIL) TO RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the NW1/4 of Section 10, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW1/4 of said Section 10; thence S 0° 25'05" W, along the West line of the NW1/4 of said Section 10, a distance of 2303.64 feet, to a point on the centerline of 105th Street, as now established; thence S 89° 34'55" E, along the centerline of said 105th Street, a distance of 252.82 feet, to a point of curvature; thence Easterly and Northeasterly, along the centerline of said 105th Street, said line being a curve to the left having a radius of 489 feet, and a central angle of 22° 10'13", a distance of 189.22 feet, to a point of reverse curvature; thence Northeasterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 6° 24'08" and whose initial tangent bearing is N 68° 14'52" E, a distance of 76.88 feet, to the true point of beginning of subject tract; thence continuing Northeasterly and Easterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 11° 20'12" and whose initial tangent bearing is N 74° 38'59" E, a distance of 148.74 feet, to a point of tangency; thence N 86° 59'12" E, along the centerline of said 105th Street, a distance of 14.30 feet; thence S 0° 32'03" W, a distance of 233.85 feet; thence N 89° 27'57" W, a distance of 80 feet; thence N 0° 32'03" E, a distance of 34 feet; thence N 89° 27'57" W, a distance of 80 feet; thence N 0° 32'03" E, a distance of 173.72 feet, to the true point of beginning of subject tract, all subject to that part thereof dedicated for street purposes, containing 0.760 gross acres, more or less

now zoned SD-CR, is hereby rezoned RP-A.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000

Approved by the Mayor the 17th day of July, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

ORDINANCE NO. 1869

AN ORDINANCE REZONING PROPERTY (SUMMERTREE VILLAS) LOCATED AT THE SOUTHWEST CORNER OF 151ST STREET AND MISSION ROAD FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 9, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 02° 04'56" East, along the East line of said Northeast Quarter, a distance of 577.00 feet; thence South 73° 23'35" West, a distance of 136.55 feet; thence North 76° 31'27" West, a distance of 34.43 feet; thence South 75° 11'20" West, a distance of 95.14 feet; thence South 79° 30'52" West, a distance of 118.80 feet; thence South 73° 00'10" West, a distance of 137.22 feet; thence South 31° 45'16" West, a distance of 48.08 feet; thence South 73° 23'35" West, a distance of 152.25 feet; thence South 67° 42'12" West, a distance of 160.81 feet; thence South 60° 54'54" West, a distance of 20.14 feet; thence South 57° 23'41" West, a distance of 76.96 feet; thence South 56° 13'39" West, a distance of 165.11 feet; thence North 28° 56'01" West, a distance of 449.67 feet; thence North 20° 34'13" East, a distance of 115.05 feet; thence North 59° 15'05" East, a distance of 11.48 feet; thence North 83° 52'30" East, a distance of 55.06 feet; thence North 10° 03'47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and Northeasterly, along a curve to the right, having a radius of 225.00 feet; and a central angle of 45° 05'47", a distance of 177.09 feet; thence North 12° 02'19" West, along an existing fence line, a distance of 236.50 feet, to a point on the North line of said Northeast Quarter; thence North 87° 30'15" East, along the North line of said Northeast Quarter, a distance of 1152.08 feet, to the Point of Beginning, except any part thereof in streets or roads. Tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2645 acres, more or less (excludes 151st Street and Mission Road right-of-way).

now zoned AG, is hereby rezoned RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000.

Approved by the Mayor the 17th day of July, 2000.

(SEAL)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM:
Patricia A. Bennett City Attorney

ORD1869

Publication Fees: $35.49

The Legal Record

Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1869--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$35.49

ORDINANCE NO. 1869

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1869

AN ORDINANCE REZONING PROPERTY (SUMMERTREE VILLAS) LOCATED AT THE SOUTHWEST CORNER OF 151ST STREET AND MISSION ROAD FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 9, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 02° 04'56" East, along the East line of said Northeast Quarter, a distance of 577.00 feet; thence South 73° 23'35" West, a distance of 136.55 feet; thence North 76°31'27" West, a distance of 34.43 feet; thence South 75° 11'20" West, a distance of 95.14 feet; thence South 79° 30'52" West, a distance of 118.80 feet; thence South 73°00'10" West, a distance of 137.22 feet; thence South 31° 45'16" West, a distance of 48.08 feet; thence South 73° 23'35" West, a distance of 152.25 feet; thence South 67° 42'12" West, a distance of 160.81 feet; thence South 60° 54'54" West, a distance of 20.14 feet; thence South 57°23'41" West, a distance of 75.95 feet; thence South 56° 13'39" West, a distance of 165.11 feet; thence North 28° 56'01" West, a distance of 449.67 feet; thence North 20°34'13" East, a distance of 115.05 feet; thence North 59°15'05" East, a distance of 11.48 feet; thence North 83° 52'30" East, a distance of 55.06 feet; thence North 10°03'47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and Northeasterly, along a curve to the right, having a radius of 225.00 feet; and a central angle of 45° 05'47", a distance of 177.09 feet; thence North 12° 02'19" West, along an existing fence line, a distance of 236.50 feet, to a point on the North line of said Northeast Quarter; thence North 87°30'15" East, along the North line of said Northeast Quarter, a distance of 1152.08 feet, to the Point of Beginning, except any part thereof in streets or roads. Tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2645 acres, more or less (excludes 151st Street and Mission Road right-of-way).

now zoned AG, is hereby rezoned RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000.

Approved by the Mayor the 17th day of July, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

ORDINANCE NO. 1868

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1372;

(b) Improvement of certain sections of Mission Road from 103rd Street to I-435 within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1204;

(c) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742.

(d) Acquisition, construction and installation of a new public works facility pursuant to K.S.A. 12-1737 and Resolution No. 1532;

(e) Improvement and reimprovement of 119th Street and Mission Road in the area of the intersection thereof within the City pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1505;

(f) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1489.

(g) Improvement and reimprovement of that section of Mission Road between 83rd Street and 95th Street within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance Nos. 1716 and 1717;

(h) Improvement and reimprovement of that section of Roe Avenue between 137th Street and 138th Terrace within the City pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1504;

(i) Reconstruction, remodeling and replacement of the bathhouse at the Municipal Pool Complex located at the City park at 10601 Lee Boulevard within the City pursuant to K.S.A. 12-1736 *et seq.* and Ordinance No. 1735;

(j) Construction of 133rd Street from the intersection of said street with State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1525; and

(k) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1524;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued its Temporary Notes dated November 1, 1999, in the principal amount of $2,600,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,000,000 and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become

due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million One Hundred Thousand Dollars ($5,100,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in

an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor, or in the absence of the Mayor, the President of the Council, and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds, together with certain other available funds of the City, shall be used to redeem and retire the Prior Notes, and the balance of such proceeds of the Notes shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax

purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of

the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 3rd day of July, 2000.

APPROVED by the Mayor the 3rd day of July, 2000.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, JOHNSON COUNTY,ss, Georgiann Thacker being first duly sworn, deposes and says: that she is legal publication manager of THE JOHNSON COUNTY SUN, a semi-weekly newspaper printed in the State of Kansas, and published in and of general paid circulation in JOHNSON COUNTY, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a semi-weekly published at least 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of SHAWNEE MISSION, KANSAS in said County as a second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for One consecutive day (weeks/days), the first publication thereof being made as aforesaid on the 7th day of July 2000, with subsequent publication being made on the following dates:

_____, 2000 _____, 2000

_____, 2000 _____, 2000

Georgiann Thacker

Subscribers and sworn to before me this 7th, day of July 2000

Deanna J. Martasin
NOTARY PUBLIC

My Commission Expires _____

Printer's Fee 92.14

Additional Copies $ _____

DEANNA J. MARTASIN
NOTARY PUBLIC
STATE OF KANSAS

First published in the Johnson County Sun, Friday, July 7, 2000

ORDINANCE NO. 1868

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1372;

(b) Improvement of certain sections of Mission Road from 103rd Street to I-435 within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance No. 1204;

(c) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742.

(d) Acquisition, construction and installation of a new public works facility pursuant to K.S.A. 12-1737 and Resolution No. 1532;

(e) Improvement and reimprovement of 119th Street and Mission Road in the area of the intersection thereof within the City pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1505;

(f) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1489.

(g) Improvement and reimprovement of that section of Mission Road between 83rd Street and 95th Street within the City pursuant to K.S.A. 12-685 *et seq.* and Ordinance Nos. 1716 and 1717;

(h) Improvement and reimprovement of that section of Roe Avenue between 137th Street and 138th Terrace within the City pursuant to K.S.A. 12-685 *et seq.* and Resolution No. 1504;

(i) Reconstruction, remodeling and replacement of the bathhouse at the Municipal Pool Complex located at the City park at 10601 Lee Boulevard within the City pursuant to K.S.A. 12-1736 *et seq.* and Ordinance No. 1735;

(j) Construction of 133rd Street from the intersection of said street with State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1525; and

(k) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 *et seq.* and Resolution No. 1524;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued its Temporary Notes dated November 1, 1999, in the principal amount of $2,600,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,000,000 and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million One Hundred Thousand Dollars ($5,100,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor, or in the absence of the Mayor, the President of the Council, and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds, together with certain other available funds of the City, shall be used to redeem and retire the Prior Notes, and the balance of such proceeds of the Notes shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 3rd day of July, 2000.

APPROVED by the Mayor the 3rd day of July, 2000.

ORDINANCE NO. 1867 C

AN ORDINANCE TO PROVIDE FOR THE LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS IN THE CITY OF LEAWOOD BY AMENDING SECTIONS 4.9.2 AND 4.9.6 OF THE LEAWOOD DEVELOPMENT ORDINANCE, AND ADDING A NEW ARTICLE 5 TO CHAPTER V OF THE LEAWOOD CITY CODE REGARDING MASSAGE.

WHEREAS, "Massage Establishments" and "Massage Therapy" are currently regulated in the City of Leawood under the provisions and terms of the Adult Use and Entertainment Ordinance codified in Section 4-9 of the Leawood Development Ordinance; and

WHEREAS, the Governing Body has determined that "Massage Establishments" and "Massage Therapy" should not be regulated as Adult Uses, but should be separately administered and regulated by the City; and

WHEREAS, the Governing Body has determined that a licensing requirement should be enacted to help administer and regulate the same; and

WHEREAS, the Governing Body has established the requirements provided for hereafter for the administration and regulation of "Massage Establishments" and "Massage Therapy" within the City of Leawood;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. That Sections 4-9.2, and 4-9.6 of Article 4 of the Leawood Development Ordinance are hereby repealed.

SECTION 2. That Section 4-9.2 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.2 Definitions.

In addition to the definitions contained in Article 8 of the Development Ordinance, the following words and phrases shall, for the purposes of this Section, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Development Ordinance, these definitions shall prevail:

A. **Administrator**: The Neighborhood Services Administrator.

B. **Adult Arcade**: Any business establishment or concern to which the public is permitted or invited and where coin or slug operated or electronically, electrically or mechanically controlled amusement devices, still or motion picture machines, projectors, videos or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are considered 'adult material' as defined by this Section.

C. **Adult Bookstore**: An establishment having as a substantial or significant portion of its stock in trade adult material, or an establishment with a segment or section devoted to the sale or display of such material.

1. An establishment shall be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the stock of the business or twenty percent (20%) of the floor area which houses the adult business is adult material provided, however, that if the adult business is housed in a building or structure which includes more than one business, then the 'floor area' shall mean and refer to only that portion of the building which is leased or

otherwise demised to the adult business.

2. An establishment shall also be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the gross receipts of the business or use derived from the sale of 'adult material' (as defined below).

D. **Adult Business or Adult Use:**

1. Any business establishment or concern which is a regular and substantial course of conduct operates as an adult bookstore, adult theater, adult arcade, adult cabaret or adult nightclub, figure modeling studio, adult dance studio, adult entertainment studio, erotic dance studio, or adult hotel; or

2. Any business establishment or concern which as a regular and substantial course of conduct offers, sells, or distributes adult oriented merchandise or sexually oriented merchandise, or which offers to its patrons adult materials or other products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical parts.

E. **Adult Cabaret or Adult Nightclub**: A business establishment or concern which features live performances by dancers or similar entertainers in the nude.

F. **Adult Dance Studio**: Any business establishment or concern which provides for members of the public a partner for dance where the partner appears nude, or where the dance is distinguished or characterized by the emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

G. **Adult Entertainment Studio**: Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, wherein an entertainer provides entertainment to a member of the public, a patron or a member, when such entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult entertainment studio includes, without being limited to, any premises that is physically arranged and used as such, whether advertised or represented as an entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other therm of like import. Adult entertainment studio shall not include theaters, concert halls, or similar establishments where entertainment is performed for groups of four or more.

H. **Adult Hotel**: A hotel which is used for presenting on a regular and substantial basis material which is distinguished or characterized by the emphasis on matter depicting or describing or relating to specified sexual activities or specified anatomical areas through closed circuit or cable television or through video tape recorder where video tapes are provided by the hotel/motel. For purposes of this subsection, a "Hotel" means any building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a motel, cabin camp, tourist cabin, or other type of lodging unit. Evidence that a sleeping room in a hotel has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult hotel as that term is defined in this Section.

I. **Adult Oriented Merchandise**: Sexually oriented implements, paraphernalia, or novelty items, such as, but not limited to: dildos, auto sucks, sexually-oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

J. **Adult Material**: Materials which are distinguished or characterized by their emphasis on matter which is distinguished or characterized by its emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

K. **Adult Theater**: A theater or other commercial establishment with or without a stage or proscenium which is used for presenting, on a regular or substantial basis, material which is distinguished or characterized by an emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

L. **Arcade Booth**: Any enclosed or partially enclosed portion of an establishment in which an adult arcade is located, or where a live performance is presented, on a regular or substantial basis, where the material presented is distinguished or characterized by an emphasis on matter depicting, or describing, or relating or specified sexual activities or specified anatomical areas.

M. **Commercial Zoning District**: Any property within the City which is zoned SD-CR (Special Development), CP-1 (Planned Neighborhood Retail) or CP-2 (Planned General Retail) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

N. **Dancer**: A Performer who dances or otherwise performs for an erotic dance studio and who seeks to arouse or excite the patron's sexual desires.

O. **Employee**: Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment studio.

P. **Entertainer**: Any person who provides entertainment within an adult entertainment studio as defined in this Section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

Q. **Entertainment**: Any exhibition, performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered for amusement.

R. **Erotic Dance Studio**: A fixed place of business which emphasizes and seeks, through one or more dancers or performers, to arouse or excite the patron's sexual desires.

S. **Figure Modeling Studio**: Any establishment or business which provides for members of the public, the services of a live human model for the purpose of reproducing the human body, wholly or partially in the nude, by means of photograph, painting, sketching, drawing, or other pictorial form.

T. **Footcandle**: A unit of illumination lighting a surface, on which there is uniformly distributed a light flux of one lumen over an area of one square foot. A lumen is a unit of measure of the quantity of light energy emitted by a light source without regard to the effectiveness of its distribution. A candela is the unit of intensity of a light source in a specific direction. One candela directed perpendicular to a surface one foot away generates one footcandle of light. A light source of one candela emits a total of 12.57 lumens. For the purposes of this Ordinance, the lumen output values shall be the initial lumen output ratings of a lamp.

U. **Industrial Zoning District**: Any property within the City which is zoned BP (Planned Business Park) or PI (Planned Industrial) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

V. **Massage**: Any method of pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

W. **Massage Establishment**: An establishment having a fixed place of business where massages are administered in accordance with the provisions of the City Code regarding Massage.

X. **Massage Therapy**: The application of Massage by a Massage Therapist as provided for by the provisions of the City Code regarding Massage.

Y. ***Master Plan:*** The document entitled *Leawood Master Development Plan* adopted by Ordinance No. 1667 (March31, 1997), which document is hereby incorporated by this reference as if set forth in its entirety herein.

Z. **Material**: Relative to adult businesses, material shall mean and include, but not be limited to, accessories, books, magazines, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, or electronically generated images or devices including computer software, or any combination thereof.

AA. **Nude**: Any state of undress in which the whole or part of any human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

BB. **Obscene**: Any material or performance is obscene if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted; and that the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

CC. **Operator**: Any person, partnership, or corporation operating, conducting or maintaining an adult use or adult business.

DD. **Park**: Any public or private land designated as Open Space - Public or Open Space - Private in the *Master Plan.*

EE. **Patron**: Any person who is a guest, member or customer on or in an adult business.

FF. **Performer**: Any person who is an employee or independent contractor of the adult business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an adult business and who seeks to arouse or excite the patron's sexual desires.

GG. **Person**: Any natural person, or any association, partnership, or corporation.

HH. **Religious Institution**: A facility used primarily for religious assembly or worship and related religious activities.

II. **Residential Zone**: Any property within the City which is designated as a Residential District pursuant to 2-1 of the Leawood Development Ordinance, as may be amended from time to time, including any property within the City which is zoned RP-A (Planned Large Lot Single Family Residential), R-1 (Single Family Residential), RP-3 (Planned Apartment House Residential) or RP-4 (Planned Cluster Residential) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Code, or RP-A5 (Planned Rural Density Single Family). The term Residential Zone shall also mean and refer to any property designated as Rural Density Residential, Low Density Residential, Medium Density Residential - Single Family Detached, Medium Density Residential - Single Family Attached, and Medium Density Residential Apartments in the *Master Plan.*

JJ. **School**: Any institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the Kansas Board of Regents or which is maintained pursuant to standards set by the Kansas Board of Regents. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, but not including dancing schools, riding academies, or trade or vocational school.

KK. **Specified Anatomical Areas** shall mean:

1. Less than completely and opaquely covered;

   a. human genitals, pubic region;

   b. buttock, or

   c. female breast below a point immediately above the tope of the areola; or

2. Any device or covering, when exposed to view, which simulates the female breast below a point immediately above the tope of the areola, human genitals, pubic region or buttock; or

3. Human or simulated male genitals in a discernible turgid state, even if completely and opaquely covered.

LL. **Specified Sexual Activities** shall mean:

1. Human genitals in a state of sexual stimulation or arousal; and/or

2. Acts of human masturbation, sexual intercourse or arousal; and/or

3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or

4. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; and/or

5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

MM. **Tavern**: Any premises on which alcoholic or cereal malt beverages are sold or served for consumption on the premises pursuant to a license or permit issued by the State of Kansas, the County of Johnson, or any other political subdivision or agency of the State of Kansas.

SECTION 3. That Section 4-9.6 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.6 Massage Establishments and Massage Therapy

No person shall operate a Massage Establishment or perform and provide Massage Therapy except as provided for by the provisions of the City Code regarding Massage. When licensed and authorized as provided by the City Code, Massage Establishments and Massage Therapy shall not be considered an adult use.

SECTION 4. That the code of the City of Leawood is hereby amended by adding a new article 5 to Chapter V. which read as follows:

CHAPTER V.

ARTICLE 5. MASSAGE

5-601 Definitions

(a) ***"Applicant."*** A person who has applied to the City for a Massage Establishment License or a Massage Therapy License or Permit as authorized by this ordinance.

(b) ***"License."*** An authorization as provided for in this ordinance for a person to:

(1) Operate and conduct a Massage Establishment; or

(2) Perform and provide Massage Therapy.

(c) ***"Licensee."*** A person who has been granted a License as provided for by this ordinance.

(d) ***"Massage."*** Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of the human genitalia.

(e) ***"Massage Establishment."*** A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck or shoulders.

(f) ***"Massage Therapy."*** The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in martial arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis equipment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.

(g) ***"Massage Therapist."*** A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.

(h) ***"Out Call."*** Massage Therapy that is conducted upon the commercial or residential premises of a Patron as specifically provided for hereafter.

(i) ***"Patron."*** A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age; provided a person under the age of 18 may utilize or receive Massage Therapy from a Licensed Massage Therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

(j) ***"Permit."*** An authorization for a student to perform Massage Therapy only as specifically provided for hereafter.

(k) ***"Person."*** Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

(l) ***"Specified Anatomical Areas."*** The human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.

5-602 Massage Licenses in General: License Required. No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall set by the City's annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of this City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits. No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.

5-606 Massage Licenses in General: Advertising. No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective Patrons that any service is available other than those services as provided for by this ordinance, or that employees or Massage Therapists are dressed in any manner other than provided for herein, nor shall any text of such advertising indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Provisions.

(a) **Applicability to Existing Businesses.** The operators of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) **Exceptions.** The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, operator of electrolysis equipment, barber or cosmetologist who is lawfully carrying out his or her particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

(c) **Further Regulations.** The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

(d) **Penalty.** Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.

(e) **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-608-609 ***Reserved.***

5-610 <u>Massage Therapy: License</u>.

(a) **Generally.** No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.

(b) **Application.** Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

(8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities therefor, including proof that such place of business currently holds a proper Massage Establishment License;

(10) Proof of the education and experience requirements as provided by this ordinance;

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

(a) **Process of Application.** Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

(b) **Issuance of License.** The License Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:

(1) The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith; or

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

(6) That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or

(7) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or

(8) Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. Any applicant still aggrieved after review by the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.

5-611 Massage Therapy: Out Calls. Outcalls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) **Residential Premises.** Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.

5-612 Massage Therapy: Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcripts. The educational and training may be received from more than one school.

(a) Education. T **Massage Therapist**

(1) o be eligible for a Massage Therapist License, the applicant must provide proof of the following:

(i) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:

a. Two hundred and fifty (250) hours of theory and practice of Massage Therapy technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic.

b. One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function. There must be a minimum of forty (40) hours of kinesiology.

c. Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, Patron interaction, state and local laws and three hours of communicable diseases.

d. Fifty (50) hours of pathology including indications and contraindications to Massage Therapy and palpation.

e. Fifteen (15) hours of hydrotherapy.

(ii) As an alternative to the above educational requirements, the applicant may provide proof that:

a. The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a (U.S.) state's licensing authority that requires a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique; or

b. The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.

(iii) In addition to meeting the requirements of either subsection (i) or subsection (ii), the applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(2) Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massaged Establishment. A Licensed Massage Therapist may also perform and provide Out Calls only when prescribed by a licensed healing arts practitioner.

(3) **Student Massage Therapy.** Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provision 5-615 of this ordinance.

5-613 Massage Therapy: Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all time have in their possession a valid Identification Card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

5-614 **Massage Therapy: Patron Registers.** All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

5-615 **Massage Therapy: Applicability to Existing Massage Providers.** An individual providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not meet the education requirements described above may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) As of the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

(1) Proof of receiving a Leawood business license to provide Massage Therapy within the City during the past twenty-four (24) months, or

(2) *Proof that the individual declared income on the individual's tax return for* performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City); and

(b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

5-616 **Massage Therapy: Revocation or Suspension of License or Permit.** A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense discussed in this ordinance or any violent felony; or

(c) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending the Massage Therapist License or Permit, the License Clerk shall give the Massage Therapist at least ten (10) days written notice of the charges and the opportunity to be publically heard by the License Clerk, or his designated representative, at which time the Licensee may present evidence in response to the charges, and the relevant facts regarding the occurrence of the conviction or offense shall be determined. All revocations or suspensions by the License Clerk are appealable to the Governing Body, provided said appeal must be in writing and delivered to the License Clerk within ten (10) days of the revocation or suspension, and further provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. If the Governing Body upholds the revocation or suspension, an appeal may then be made to the Johnson County District Court as provided by law within thirty (30) days after the review of the Governing Body.

5-617-619 Reserved.

5-620 <u>Massage Establishment: License</u>.

(a) **Generally.** No person shall operate and conduct a Massage Establishment within the City without first obtaining a valid Massage Establishment License issued by the City pursuant to the provisions of this ordinance. To receive a License for operating and conducting a Massage Establishment, the applicant must meet the requirements as provided for hereafter. A Massage Establishment License specifically does not authorize the Licensee to perform and provide Massage Therapy without first obtaining a separate Massage Therapy License. A Massage Establishment License shall also be required to operate and conduct a business to perform and provide Out Calls.

(b) **Application.** Applicants for a License to operate or conduct a Massage Establishment within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application to operate a Massage Establishment shall contain the following:

Note: the following informational requirements for applicants shall also be provided as applicable for each stockholder holding more than 10% of the stock, and each director or officer (if the applicant is a corporation), each partner or limited partner (if the applicant is a partnership), and any manager or other person principally in charge of the business operations of the proposed establishment.

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to (or will) perform within such establishment, and the exact nature of the services to be provided under the requested License (As applicable);

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

(8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities therefor;

(10) A list of all Massage Therapists working in the Massage Establishment and proof that such Massage Therapists are properly licensed (to be updated as necessary);

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

(a) **Process of Application.** Applications for a Massage Establishment License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police, the Neighborhood Services Administrator and the Building Official for their review and investigation. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted. The Neighborhood Services Administrator and the Building Official shall determine whether the structure of the proposed Massage Establishment complies with the requirements and standards of all applicable health, zoning, building code, fire and property maintenance ordinances, and all other applicable codes, standards and zoning requirements, provided the premises need not be designed or set up for the requirements of a Massage Establishment on the date of application, provided further that such requirements for a Massage Establishment are met prior to the first day of business. The Neighborhood Services Administrator and the Building Official shall report their findings to the License Clerk within ten (10) working days from the date the application is submitted. Upon the determination of the qualifications of the applicant and the receipt of the reports of the Neighborhood Services Administrator and the Building Official, the License Clerk shall schedule the application for review by the Governing Body at the earliest date possible with consideration for notice requirements established by law, provided that the application shall be approved or disapproved within forty-five (45) days from the date the application is submitted. The applicant shall be notified in writing of the date of the review by the Governing Body, and will be afforded an opportunity to be heard at such time. If inspection items related to structural design of the premises cannot be verified prior to the review by the Governing Body, the application may be approved contingent upon a final inspection prior to the issuance of the License.

(b) **Issuance of License.** The Governing Body shall review the application and shall approve the issuance of a License for a Massage Establishment, unless it is found that:

(1) The applicant, any stockholders holding more than 10% of the stock or any director or officer (if the applicant is a corporation), any partner or limited partner (if the applicant is a partnership), or any manager or other person principally in charge of the operation of the business, has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in conjunction therewith; or

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

(6) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's code or building, zoning, and health ordinances and regulations; or

(7) The manager or other person principally in charge of the operation of the business would be ineligible to receive a License under the provisions of this ordinance; or

(8) Any other application requirement has not been met.

Upon approval of the application by the Governing Body, the License Clerk shall issue the Massage Establishment License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the date of the disapproval.

5-621 **Massage Establishment: Display of Licenses.** A Massage Establishment shall at all times display in an open and conspicuous place its Massage Establishment License. It shall also display in an open and conspicuous place either a copy of the Identification Card of all Massage Therapists working at the Massage Establishment, or an identified color picture (at least 4 inches by 4 inches) of each Massage Therapist that provides the same information.

5-622 Massage Establishment: Inspection.

(a) **Inspection of Proposed Massage Establishment.** No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Neighborhood Services Administrator, or the Building Official, or his/her authorized representative has been completed. . The Neighborhood Services Administrator, or the Building Official, or his/her authorized representative shall certify that the proposed Massage Establishment complies with all of the requirements of this ordinance and shall give such certification to the License Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of the premises, nor to preclude authorized inspection thereof.

(b) **Supplemental Inspections.** The License Clerk, the Police Department, the Neighborhood Services Administrator, the Building Official or his/her authorized representative may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this ordinance are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee License.

5-623 Massage Establishment: Facilities. No business shall be operated or conducted at any Massage Establishment without first complying with the following with the minimum requirements:

(a) **Massage Rooms**. Rooms in which Massage Therapy is to be practiced or administered shall have at least fifty (50) square feet of clear floor area and shall maintain a light level of not less than forty (40) foot-candles as measured three (3) feet above the floor. Such rooms shall contain a door incapable of being locked from the exterior or interior. Such rooms, or rooms immediately adjacent thereto, shall be equipped with cabinets for the storage of clean linen and chemicals and approved receptacles for the storage of soiled linen.

(b) **Dressing Rooms**. Provisions for a separate dressing room for each sex must be available within all Massage Establishments, with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(c) **Toilet Facilities**. Toilet facilities shall be provided in convenient locations. When five or more employees and Patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. The separate toilet facilities shall be designated as to the sex accommodated therein.

(d) **Lavatories or Wash Basins**. Lavatories or wash basins shall be provided in either the toilet room or a vestibule with both hot and cold running water. Soap in a dispenser and sanitary towels shall also be provided.

(e) **Cleanliness of Establishment**. Every portion of a Massage Establishment, including appliances, shall be kept clean and operated in a sanitary condition.

(1) The walls shall be clean, and the walls shall be painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition.

(2) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(f) **Towels and Linen**. When applicable, all Massage Establishments shall provide clean, laundered sheets and towels in sufficient quantity, and such items shall be laundered after each use thereof and stored in a sanitary manner. Towels, linen, and items for the personal use of employees and Patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for or by more than one Patron.

5-624 **Massage Establishment: Operation Regulations.** The operation of a Massage Establishment and the provision and performance of Massage Therapy shall be subject to the following regulations:

(a) **Hours**. Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day. Out Calls prescribed by a licensed healing arts practitioner shall cease between the hours of 9:00 p.m. and 8:00 a.m. each day.

(b) **Supervision**. The premises shall be supervised at all times when open for business. The Licensee or a person employed as a Massage Therapist shall personally supervise the business, and shall not violate or permit others to violate any applicable provision of this ordinance. The violation of any such provision by any agent or employee of the Licensee shall constitute a violation by the Licensee.

(c) **Separation of Sexes**. It shall be unlawful for Patrons of the opposite genderto receive treatment in the same room or the same quarters at the same time. Additionally, it shall also be unlawful for any person to be able to view or to be in the same room as persons of the opposite gender whose Specified Anatomical Areas are not fully covered.

(d) **Patron Attire**. No owner, manager, Massage Therapist or employee, while performing any task or service associated with the Massage Therapy, shall be present in any room with a Patron, or allow any other person to be present in a room with a Patron (excluding bathrooms, dressing rooms, or any room utilized for dressing purposes), unless the Patron's Specified Anatomical Areas are fully covered by towels, cloths or undergarments. Any contact with a Patron's genital area is strictly prohibited.

(e) **Employee Attire**. While performing or available to perform Massage Therapy or related services, all employees and Massage Therapists shall be fully clothed and covered, modestly attired, clean, and wearing clean outer garments. For purposes of this subsection, fully clothed and covered means a state of dress in which the covering shall be of an opaque material. Diaphanous or transparent clothing is prohibited. Additionally, the clothing must cover the employees and the Massage Therapists' chests at all times, and extend from a point not to exceed four (4) inches above the center of the knee cap to the base of the neck. Finally, the clothing shall be maintained in a clean and sanitary condition.

(f) **Identification Card**. All Massage Therapists shall be required to conspicuously display their valid Identification Card as required above.

(g) **Danger to Safety or Health**. No service shall be given which is clearly dangerous or harmful in the opinion of the Chief of Police, the Neighborhood Services Administrator or the Building Official, to the safety or health of any person, and after such notice in writing has been delivered to the Licensee from such director or officer.

(h) **Alcoholic Beverages**. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any Licensed Massage Establishment, or during any Out Call; provided this restriction shall not apply to businesses where the Licensed Massage Therapy is accessory to the predominant business purpose of the establishment; provided further that no alcohol is permitted on that portion of the premises where the Massage Therapy occurs.

(i) **Conduct of Business**. All Licensees licensed under the provisions of this ordinance shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their employees which constitutes a violation of the provisions of this ordinance. Any violation of the city, state, or federal laws committed on the premises by any such Licensee or employee affecting the eligibility or suitability of such person to hold a License may be grounds for suspension or revocation of same.

5-625 <u>Massage Establishment: Employee and Patron Registers</u>.

(a) **Employees**. A Massage Establishment shall keep and maintain on the premises a current register of all employees showing such employee's name, address, position and license number (if applicable). Such register shall be open to inspection at all reasonable times by any city inspector or police officer.

(b) **Patrons**. A Massage Establishment shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year.

5-626 <u>Massage Establishment: Restrictions on Place of Business</u>.

a. **Operation of Massage Establishment**. Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment in a private residence or noncommercial business establishment is prohibited.

b. **Hotels and Motels.** No hotel or motel may receive a Massage Establishment License.

5-627 <u>Massage Establishment: Revocation or Suspension of License</u>. A Massage Establishment License may be revoked or suspended by the Governing Body after a public hearing before the Governing Body, and a determination that:

(a) A provision for the issuance of a Massage Establishment License has been violated; or

(b) The Licensee or its employee, including a Massage Therapist, has been convicted of any offense discussed in this ordinance or any violent felony, and the Licensee has actual or constructive knowledge of the violation or conviction; or

(c) The Licensee refused to permit a duly authorized police officer or city employee to inspect the premises or the operations of the Licensee; or

(d) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending a Massage Establishment License, the Governing Body shall give the Licensee at lease ten (10) days written notice of the charges and the opportunity to be heard by the Governing Body, at which time the Licensee may present evidence in response to the charges. A Licensee aggrieved by the decision of the Governing Body may appeal the decision to the Johnson County District Court as provided by law within thirty (30) days after the date of the revocation or suspension.

SECTION 5. This ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

PASSED by the Governing Body, the 19 day of June, 2000.

ADOPTED by the Governing body the 19 day of June, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

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Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1867C--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$323.26

ORDINANCE NO. 1867 C

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1867 C

ORDINANCE TO PROVIDE FOR THE LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS IN THE CITY OF LEAWOOD BY AMENDING SECTIONS 4.9.2 AND 4.9.6 OF THE LEAWOOD DEVELOPMENT ORDINANCE, AND ADDING A NEW ARTICLE 5 TO CHAPTER V OF THE LEAWOOD CITY CODE REGARDING MASSAGE.

WHEREAS, "Massage Establishments" and "Massage Therapy" are currently regulated in the City of Leawood under the provisions and terms of the Adult Use and Entertainment Ordinance codified in Section 4-9 of the Leawood Development Ordinance; and

WHEREAS, the Governing Body has determined that "Massage Establishments" and "Massage Therapy" should not be regulated as Adult Uses, but should be separately administered and regulated by the City; and

WHEREAS, the Governing Body has determined that a licensing requirement should be enacted to help administer and regulate the same; and

WHEREAS, the Governing Body has established the requirements provided for hereafter for the administration and regulation of "Massage Establishments" and "Massage Therapy" within the City of Leawood;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. That Sections 4-9.2, and 4-9.6 of Article 4 of the Leawood Development Ordinance are hereby repealed.

SECTION 2. That Section 4-9.2 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.2 Definitions.

In addition to the definitions contained in Article 8 of the Development Ordinance, the following words and phrases shall, for the purposes of this Section, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Development Ordinance, these definitions shall prevail:

A. **Administrator:** The Neighborhood Services Administrator.

B. **Adult Arcade:** Any business establishment or concern to which the public is permitted or invited and where coin or slug operated or electronically, electrically or mechanically controlled amusement devices, still or motion picture machines, projectors, videos or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are considered 'adult material' as defined by this Section.

C. **Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade adult material, or an establishment with a segment or section devoted to the sale or display of such material.

1. An establishment shall be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the stock of the business or twenty percent (20%) of the floor area which houses the adult business is adult material provided, however, that if the adult business is housed in a building or structure which includes more than one business, then the 'floor area' shall mean and refer to only that portion of the building which is leased or otherwise demised to the adult business.

2. An establishment shall also be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the gross receipts of the business or use derived from the sale of 'adult material' (as defined below).

D. **Adult Business or Adult Use:**

1. Any business establishment or concern which is a regular and substantial course of conduct operates as an adult bookstore, adult theater, adult arcade, adult cabaret or adult nightclub, figure modeling studio, adult dance studio, adult entertainment studio, erotic dance studio, or adult hotel; or

2. Any business establishment or concern which as a regular and substantial course of conduct offers, sells, or distributes adult oriented merchandise or sexually oriented merchandise, or which offers to its patrons adult materials or other products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical parts.

E. **Adult Cabaret or Adult Nightclub:** A business establishment or concern which features live performances by dancers or similar entertainers in the nude.

F. **Adult Dance Studio:** Any business establishment or concern which provides for members of the public a partner for dance where the partner appears nude, or where the dance is distinguished or characterized by the emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

G. ***Adult Entertainment Studio:*** Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, wherein an entertainer provides entertainment to a member of the public, a patron or a member, when such entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult entertainment studio includes, without being limited to, any premises that is physically arranged and used as such, whether advertised or represented as an entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other therm of like import. Adult entertainment studio shall not include theaters, concert halls, or similar establishments where entertainment is performed for groups of four or more.

H. ***Adult Hotel:*** A hotel which is used for presenting on a regular and substantial basis material which is distinguished or characterized by the emphasis on matter depicting or describing or relating to specified sexual activities or specified anatomical areas through closed circuit or cable television or through video tape recorder where video tapes are provided by the hotel/motel. For purposes of this subsection, a "Hotel" means any building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a motel, cabin camp, tourist cabin, or other type of lodging unit. Evidence that a sleeping room in a hotel has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebutable presumption that the establishment is an adult hotel as that term is defined in this Section.

I. **Adult Oriented Merchandise:** Sexually oriented implements, paraphernalia, or novelty items, such as, but not limited to: dildos, auto sucks, sexually-oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

J. **Adult Material:** Materials which are distinguished or characterized by their emphasis on matter which is distinguished or characterized by its emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

K. **Adult Theater:** A theater or other commercial establishment with or without a stage or proscenium which is used for presenting, on a regular or substantial basis, material which is distinguished or characterized by an emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

L. **Arcade Booth:** Any enclosed or partially enclosed portion of an establishment in which an adult arcade is located, or where a live performance is presented, on a regular or substantial basis, where the material presented is distinguished or characterized by an emphasis on matter depicting, or describing, or relating or specified sexual activities or specified anatomical areas.

M. **Commercial Zoning District:** Any property within the City which is zoned SD-CR (Special Development), CP-1 (Planned Neighborhood Retail) or CP-2 (Planned General Retail) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

N. **Dancer:** A Performer who dances or otherwise performs for an erotic dance studio and who seeks to arouse or excite the patron's sexual desires.

O. **Employee:** Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment studio.

P. **Entertainer:** Any person who provides entertainment within an adult entertainment studio as defined in this Section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

Q. **Entertainment:** Any exhibition, performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered for amusement.

R. **Erotic Dance Studio:** A fixed place of business which emphasizes and seeks, through one or more dancers or performers, to arouse or excite the patron's sexual desires.

S. **Figure Modeling Studio:** Any establishment or business which provides for members of the public, the services of a live human model for the purpose of reproducing the human body, wholly or partially in the nude, by means of photograph, painting, sketching, drawing, or other pictorial form.

T. **Footcandle:** A unit of illumination lighting a surface, on which there is uniformly distributed a light flux of one lumen over an area of one square foot. A lumen is a unit of measure of the quantity of light energy emitted by a light source without regard to the effectiveness of its distribution. A candela is the unit of intensity of a light source in a specific direction. One candela directed perpendicular to a surface one foot away generates one footcandle of light. A light source of one candela emits a total of 12.57 lumens. For the purposes of this Ordinance, the lumen output values shall be the initial lumen output ratings of a lamp.

U. **Industrial Zoning District:** Any property within the City which is zoned BP (Planned Business Park) or PI (Planned Industrial) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

V. **Massage:** Any method of pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

W. **Massage Establishment:** An establishment having a fixed place of business where massages are administered in accordance with the provisions of the City Code regarding Massage.

X. **Massage Therapy:** The application of Massage by a Massage Therapist as provided for by the provisions of the City Code regarding Massage.

Y. ***Master Plan:*** The document entitled *Leawood Master Development Plan* adopted by Ordinance No. 1667 (March 31, 1997), which document is hereby incorporated by this reference as if set forth in its entirety herein.

Z. **Material:** Relative to adult businesses, material shall mean and include, but not be limited to, accessories, books, magazines, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, or electronically generated images or devices including computer software, or any combination thereof.

AA. **Nude:** Any state of undress in which the whole or part of any human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

BB. **Obscene:** Any material or performance is obscene if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted; and that the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

CC. **Operator:** Any person, partnership, or corporation operating, conducting or maintaining an adult use or adult business.

DD. **Park:** Any public or private land designated as Open Space - Public or Open Space - Private in the *Master Plan*.

EE. **Patron:** Any person who is a guest, member or customer on or in an adult business.

FF. **Performer:** Any person who is an employee or independent contractor of the adult business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an adult business and who seeks to arouse or excite the patron's sexual desires.

GG. **Person:** Any natural person, or any association, partnership, or corporation.

HH. **Religious Institution:** A facility used primarily for religious assembly or worship and related religious activities.

II. **Residential Zone:** Any property within the City which is designated as a Residential District pursuant to 2-1 of the Leawood Development Ordinance, as may be amended from time to time, including any property within the City which is zoned RP-A (Planned Large Lot Single Family Residential), R-1 (Single Family Residential), RP-3 (Planned Apartment House Residential) or RP-4 (Planned Cluster Residential) on the City's official zoning map adopted pursuant to 2-2 of the Leawood Development Code, or RP-A5 (Planned Rural Density Single Family). The term Residential Zone shall also mean and refer to any property designated as Rural Density Residential, Low Density Residential, Medium Density Residential - Single Family Detached, Medium Density Residential - Single Family Attached, and Medium Density Residential Apartments in the *Master Plan*.

JJ. **School:** Any institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the Kansas Board of Regents or which is maintained pursuant to standards set by the Kansas Board of Regents. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, but not including dancing schools, riding academies, or trade or vocational school.

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2) Merchants shall make application to the City of Leawood and shall provide a scaled plot plan, which accurately depicts the proposed location of the sales event. The applicant shall also provide verification of the following items:

a) Preservation of all existing parking spaces and emergency access corridors;

b) Type and quantity of material to be sold;

c) Proposed advertising / signage;

d) Method of trash containment;

e) Sales start and completion dates.

Duly received applications shall be reviewed within five (5) business days from the date of submittal receipt. Under no circumstance shall the sale event commence without the applicant first obtaining the required Administrative Special Use Permit.

Section 2. Existing Section Repealed. That existing Section 3-8 of the Leawood Development Ordinance is hereby repealed.

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of June, 2000.

Approved by the Mayor the 19th day of June, 2000.

(SEAL)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

TREASURER'S REPORT

First published in The Legal Record, Tuesday, July 18, 2000.

CITY OF LENEXA
TREASURER'S REPORT
QUARTER ENDING 06/30/2000

Fund Name	Beginning Balance	Revenue	Expense	Ending Balance
100 General	$ 4,024,507.27	$ 5,702,185.83	$ 5,786,782.72	$ 3,939,910.38
200 Debt Service	3,527,091.35	243,544.35	0.00	3,770,635.70
300 Employee Benefit	1,468,752.21	180,853.00	1,344,945.20	284,460.01
315 Special Highway	352,484.67	278,861.22	0.00	631,345.89
320 Tourism & Convention	44,594.09	83,797.59	126,285.00	2,106.68
330 Special Alcohol	128,041.09	45,071.02	44,608.65	128,503.46
340 Special Parks & Recreation	46,574.71	43,831.02	0.00	90,405.73
350 3% Park	27,942.84	97,504.71	0.00	125,447.55
370 Special Event	43,698.04	31,788.80	17,071.63	60,615.21
401 TIP Zone 1	693,627.97	277,625.48	0.00	971,253.45
402 TIP Zone 2	243,627.97	28,782.64	0.00	272,610.61
403 TIP Zone 3	5,390.08	116.83	0.00	5,506.91
405 Holland Escrow	1,086.27	7.43	1,093.70	0.00
415 Special Street	1,463,439.52	29,163.70	6,193.68	1,486,409.54
421 Street Tree Zone 1	162,612.94	20,132.99	15,455.00	167,290.93
422 Street Tree Zone 2	202,307.92	4,143.80	15,151.20	191,300.52
430 Building Maintenance Reserve	425,388.06	8,851.52	89,157.22	345,082.36
435 American Disability Act	37,471.85	811.29	2,693.00	35,589.94
440 Capital Improvement	3,811,694.24	75,342.88	199,490.41	3,687,746.71
445 Employee Liability Reserve	51,012.11	695.82	0.00	51,707.93
455 Arts Council	18,552.97	361.61	0.00	18,914.58
460 Risk Management	955,697.28	55,249.04	10,450.48	1,000,495.84
465 Fast Grant	34,856.42	87,194.31	88,040.68	34,010.05
475 Traffic Grant	-551.18	0.00	-1.05	-550.13
480 Health Plan	1,363,436.38	570,755.82	661,680.90	1,272,511.30
490 Equipment Reserve Fund	1,401,218.55	24,948.98	333,043.31	1,093,124.20
495 Thompson Farm TIF	871,494.36	15,087.55	377.38	886,204.53
496 Thompson Farm Barn	-40,601.74	0.00	86,196.88	-126,798.62
497 Meritex TIF	43,800.96	758.04	0.00	44,559.00
500 Law Enforcement Trust	345,433.63	12,073.20	60,993.98	296,512.85
505 Legal Trust Fund	2,384.93	55.13	0.00	2,440.06
520 Public Improvement Street Development	424,843.27	10,657.98	0.00	435,501.25
595 Swimming Pool	110,907.58	268,676.55	111,355.43	268,228.70
Capital Projects	11,216,447.44	8,364,999.56	4,403,240.14	15,178,206.86
Grand Total	$33,512,065.67	$18,543,729.87	$13,404,305.54	$38,651,490.00

Cash Account	$38,651,490.00	Endowment Account	
Less Investments	$35,757,613.13	Cash 03/31/2000	$14,156.33
Checking Account	$887,976.87	Revenue	582.60
Petty Cash	$5,900.00	Expenditures	0.00
		Balance 06/30/2000	$14,738.93
General Obligation Bonds	$49,010,000.00		
Temporary Notes	$3,220,000.00	This statement is correct	
Tax Increment Financing Bonds	$565,000.00	Mary Sue Fry	
		Treasurer, City of Lenexa, Kansas	

ORDINANCE NO. 1869

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1869

AN ORDINANCE REZONING PROPERTY (SUMMERTREE VILLAS) LOCATED AT THE SOUTHWEST CORNER OF 151ST STREET AND MISSION ROAD FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 9, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 02° 04'56" East, along the East line of said Northeast Quarter, a distance of 577.00 feet; thence South 73°23'35" West, a distance of 136.55 feet; thence North 76°31'27" West, a distance of 34.43 feet; thence South 75° 11'20" West, a distance of 95.14 feet; thence South 79°30'52" West, a distance of 118.80 feet; thence South 73°00'10" West, a distance of 137.22 feet; thence South 31° 49'16" West, a distance of 48.08 feet; thence South 73°23'35" West, a distance of 152.25 feet; thence South 67° 42'12" West, a distance of 160.81 feet; thence South 60° 54'54" West, a distance of 20.14 feet; thence South 57°23'41" West, a distance of 75.96 feet; thence South 56°13'39" West, a distance of 165.11 feet; thence North 28°56'01" West, a distance of 449.67 feet; thence North 20°34'13" East, a distance of 115.05 feet; thence North 59°15'05" East, a distance of 11.49 feet; thence North 83° 52'30" East, a distance of 55.06 feet; thence North 10°03'47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and Northeasterly, along a curve to the right, having a radius of 225.00 feet; and a central angle of 45°05'47", a distance of 177.09 feet; thence North 12°02'29" West, along an existing fence line, a distance of 236.50 feet, to a point on the North line of said Northeast Quarter; thence North 87°30'15" East, along the North line of said Northeast Quarter, a distance of 1152.08 feet, to the Point of Beginning, except any part thereof in streets or roads. Tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2648 acres, more or less (excludes 151st Street and Mission Road right-of-way).

now zoned AG, is hereby rezoned RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000.

Approved by the Mayor the 17th day of July, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

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KK. **Specified Anatomical Areas** shall mean:

1. Less than completely and opaquely covered:
   a. human genitals, pubic region;
   b. buttock, or
   c. female breast below a point immediately above the tope of the areola; or
2. Any device or covering, when exposed to view, which simulates the female breast below a point immediately above the tope of the areola, human genitals, pubic region or buttock; or
3. Human or simulated male genitals in a discernible turgid state, even if completely and opaquely covered.

LL. **Specified Sexual Activities** shall mean:

1. Human genitals in a state of sexual stimulation or arousal; and/or
2. Acts of human masturbation, sexual intercourse or arousal; and/or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
4. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; and/or
5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or
6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

MM. **Tavern:** Any premises on which alcoholic or cereal malt beverages are sold or served for consumption on the premises pursuant to a license or permit issued by the State of Kansas, the County of Johnson, or any other political subdivision or agency of the State of Kansas.

SECTION 3. That Section 4-9.6 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.6 Massage Establishments and Massage Therapy

No person shall operate a Massage Establishment or perform and provide Massage Therapy except as provided for by the provisions of the City Code regarding Massage. When licensed and authorized as provided by the City Code, Massage Establishments and Massage Therapy shall not be considered an adult use.

SECTION 4. That the code of the City of Leawood is hereby amended by adding a new article 5 to Chapter V. which read as follows:

CHAPTER V.

ARTICLE 5. MASSAGE

5-601 Definitions

(a) *"Applicant."* A person who has applied to the City for a Massage Establishment License or a Massage Therapy License or Permit as authorized by this ordinance.

(b) *"License."* An authorization as provided for in this ordinance for a person to:

(1) Operate and conduct a Massage Establishment; or

(2) Perform and provide Massage Therapy.

(c) *"Licensee."* A person who has been granted a License as provided for by this ordinance.

(d) *"Massage."* Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of the human genitalia.

(e) *"Massage Establishment."* A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck or shoulders.

(f) *"Massage Therapy."* The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in martial arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis equipment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.

(g) *"Massage Therapist."* A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.

(h) *"Out Call."* Massage Therapy that is conducted upon the commercial or residential premises of a Patron as specifically provided for hereafter.

(i) *"Patron."* A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age; provided a person under the age of 18 may utilize or receive Massage Therapy from a Licensed Massage Therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

(j) *"Permit."* An authorization for a student to perform Massage Therapy only as specifically provided for hereafter.

(k) *"Person."* Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

(l) *"Specified Anatomical Areas."* The human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.

5-602 Massage Licenses in General: License Required. No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall set by the City's annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of this City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits. No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.

5-606 Massage Licenses in General: Advertising. No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective Patrons that any service is available other than those services as provided for by this ordinance, or that employees or Massage Therapists are dressed in any manner other than provided for herein, nor shall any text of such advertising indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Provisions.

(a) **Applicability to Existing Businesses.** The operators of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) **Exceptions.** The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, operator of electrolysis equipment, barber or cosmetologist who is lawfully carrying out his or her particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

(c) **Further Regulations.** The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

(d) **Penalty.** Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.

(e) **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-608-609 Reserved.

5-610 Massage Therapy: License.

(a) **Generally.** No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.

(b) **Application.** Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

(8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities therefor, including proof that such place of business currently holds a proper Massage Establishment License;

(10) Proof of the education and experience requirements as provided by this ordinance;

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

(a) **Process of Application.** Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

(b) **Issuance of License.** The License Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:

(1) The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith; or

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

(6) That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or

(7) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or

(8) Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. Any applicant still aggrieved after review by the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.

5-611 Massage Therapy: Out Calls. Outcalls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) **Residential Premises.** Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.

5-612 Massage Therapy: Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcripts. The educational and training may be received from more than one school.

(a) Education. T **Massage Therapist**

(1) o be eligible for a Massage Therapist License, the applicant must provide proof of the following:

(i) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:

a. Two hundred and fifty (250) hours of theory and practice of Massage Therapy technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic.

b. One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function. There must be a minimum of forty (40) hours of kinesiology.

c. Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, Patron interaction, state and local laws and three hours of communicable diseases.

d. Fifty (50) hours of pathology including indications and contraindications to Massage Therapy and palpation.

e. Fifteen (15) hours of hydrotherapy.

(ii) As an alternative to the above educational requirements, the applicant may provide proof that:

a. The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a (U.S.) state's licensing authority that requires a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique; or

b. The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.

(iii) In addition to meeting the requirements of either subsection (i) or subsection (ii), the applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(2) Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massaged Establishment. A Licensed Massage Therapist may also perform and provide Out Calls only when prescribed by a licensed healing arts practitioner.

(3) **Student Massage Therapy.** Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provision 5-615 of this ordinance.

5-613 Massage Therapy: Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all time have in their possession a valid Identification Card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

5-614 Massage Therapy: Patron Registers. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

5-615 Massage Therapy: Applicability to Existing Massage Providers. An individual providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not meet the education requirements described above may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) As of the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

(1) Proof of receiving a Leawood business license to provide Massage Therapy within the City during the past twenty-four (24) months, or

(2) Proof that the individual declared income on the individual's tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City); and

(b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

5-616 Massage Therapy: Revocation or Suspension of License or Permit. A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense discussed in this ordinance or any violent felony; or

(c) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

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(8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities therefor, including proof that such place of business currently holds a proper Massage Establishment License;

(10) Proof of the education and experience requirements as provided by this ordinance;

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

(a) **Process of Application.** Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

(b) **Issuance of License.** The License Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:

(1) The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith; or

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

(6) That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or

(7) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or

(8) Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. Any applicant still aggrieved after review by the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.

5-611 Massage Therapy: Out Calls. Outcalls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) **Residential Premises.** Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.

5-612 Massage Therapy: Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcripts. The educational and training may be received from more than one school.

(a) Education. T Massage Therapist

(1) o be eligible for a Massage Therapist License, the applicant must provide proof of the following:

(i) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:

a. Two hundred and fifty (250) hours of theory and practice of Massage Therapy technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic.

b. One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function. There must be a minimum of forty (40) hours of kinesiology.

c. Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, Patron interaction, state and local laws and three hours of communicable diseases.

d. Fifty (50) hours of pathology including indications and contraindications to Massage Therapy and palpation.

e. Fifteen (15) hours of hydrotherapy.

(ii) As an alternative to the above educational requirements, the applicant may provide proof that:

a. The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a (U.S.) state's licensing authority that requires a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique; or

b. The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (300) hours, in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.

(iii) In addition to meeting the requirements of either subsection (i) or subsection (ii), the applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(2) Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massaged Establishment. A Licensed Massage Therapist may also perform and provide Out Calls only when prescribed by a licensed healing arts practitioner.

(3) **Student Massage Therapy.** Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provision 5-615 of this ordinance.

5-613 Massage Therapy: Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all time have in their possession a valid Identification Card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

5-614 Massage Therapy: Patron Registers. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

5-615 Massage Therapy: Applicability to Existing Massage Providers. An individual providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not meet the education requirements described above may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) As of the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

(1) Proof of receiving a Leawood business license to provide Massage Therapy within the City during the past twenty-four (24) months, or

(2) Proof that the individual declared income on the individual's tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City); and

(b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

5-616 Massage Therapy: Revocation or Suspension of License or Permit. A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense discussed in this ordinance or any violent felony; or

(c) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

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KK. **Specified Anatomical Areas** shall mean:

1. Less than completely and opaquely covered;
   a. human genitals, pubic region;
   b. buttock, or
   c. female breast below a point immediately above the tope of the areola; or
2. Any device or covering, when exposed to view, which simulates the female breast below a point immediately above the tope of the areola, human genitals, pubic region or buttock; or
3. Human or simulated male genitals in a discernible turgid state, even if completely and opaquely covered.

LL. **Specified Sexual Activities** shall mean:

1. Human genitals in a state of sexual stimulation or arousal; and/or
2. Acts of human masturbation, sexual intercourse or arousal; and/or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
4. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; and/or
5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or
6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

MM. **Tavern**: Any premises on which alcoholic or cereal malt beverages are sold or served for consumption on the premises pursuant to a license or permit issued by the State of Kansas, the County of Johnson, or any other political subdivision or agency of the State of Kansas.

SECTION 3. That Section 4-9.6 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.6 Massage Establishments and Massage Therapy

No person shall operate a Massage Establishment or perform and provide Massage Therapy except as provided for by the provisions of the City Code regarding Massage. When licensed and authorized as provided by the City Code, Massage Establishments and Massage Therapy shall not be considered an adult use.

SECTION 4. That the code of the City of Leawood is hereby amended by adding a new article 5 to Chapter V. which read as follows:

CHAPTER V.

ARTICLE 5. MASSAGE

5-601 Definitions

(a) ***"Applicant."*** A person who has applied to the City for a Massage Establishment License or a Massage Therapy License or Permit as authorized by this ordinance.

(b) ***"License."*** An authorization as provided for in this ordinance for a person to:

(1) Operate and conduct a Massage Establishment; or

(2) Perform and provide Massage Therapy.

(c) ***"Licensee."*** A person who has been granted a License as provided for by this ordinance.

(d) ***"Massage."*** Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of the human genitalia.

(e) ***"Massage Establishment."*** A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck or shoulders.

(f) ***"Massage Therapy."*** The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in martial arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis equipment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.

(g) ***"Massage Therapist."*** A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.

(h) ***"Out Call."*** Massage Therapy that is conducted upon the commercial or residential premises of a Patron as specifically provided for hereafter.

(i) ***"Patron."*** A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age; provided a person under the age of 18 may utilize or receive Massage Therapy from a Licensed Massage Therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

(j) ***"Permit."*** An authorization for a student to perform Massage Therapy only as specifically provided for hereafter.

(k) ***"Person."*** Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

(l) ***"Specified Anatomical Areas."*** The human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.

5-602 Massage Licenses in General: License Required. No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall set by the City's annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of this City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits. No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.

5-606 Massage Licenses in General: Advertising. No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective Patrons that any service is available other than those services as provided for by this ordinance, or that employees or Massage Therapists are dressed in any manner other than provided for herein, nor shall any text of such advertising indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Provisions.

(a) **Applicability to Existing Businesses.** The operators of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) **Exceptions.** The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, operator of electrolysis equipment, barber or cosmetologist who is lawfully carrying out his or her particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

(c) **Further Regulations.** The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

(d) **Penalty.** Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.

(e) **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-608-609 Reserved.

5-610 Massage Therapy: License.

(a) **Generally.** No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.

(b) **Application.** Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

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Before revoking or suspending the Massage Therapist License or Permit, the License Clerk shall give the Massage Therapist at least ten (10) days written notice of the charges and the opportunity to be publically heard by the License Clerk, or his designated representative, at which time the Licensee may present evidence in response to the charges, and the relevant facts regarding the occurrence of the conviction or offense shall be determined. All revocations or suspensions by the License Clerk are appealable to the Governing Body, provided said appeal must be in writing and delivered to the License Clerk within ten (10) days of the revocation or suspension, and further provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. If the Governing Body upholds the revocation or suspension, an appeal may then be made to the Johnson County District Court as provided by law within thirty (30) days after the review of the Governing Body.

5-617-619 Reserved.

5-620 Massage Establishment: License.

(a) **Generally.** No person shall operate and conduct a Massage Establishment within the City without first obtaining a valid Massage Establishment License issued by the City pursuant to the provisions of this Ordinance. To receive a License for operating and conducting a Massage Establishment, the applicant must meet the requirements as provided for hereafter. A Massage Establishment License specifically does not authorize the Licensee to perform and provide Massage Therapy without first obtaining a separate Massage Therapy License. A Massage Establishment License shall also be required to operate and conduct a business to perform and provide Out Calls.

(b) **Application.** Applicants for a License to operate or conduct a Massage Establishment within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application to operate a Massage Establishment shall contain the following:

Note: the following informational requirements for applicants shall also be provided as applicable for each stockholder holding more than 10% of the stock, and each director or officer (if the applicant is a corporation), each partner or limited partner (if the applicant is a partnership), and any manager or other person principally in charge of the business operations of the proposed establishment.

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to (or will) perform within such establishment, and the exact nature of the services to be provided under the requested License (As applicable);

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

(8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities therefor;

(10) A list of all Massage Therapists working in the Massage Establishment and proof that such Massage Therapists are properly licensed (to be updated as necessary);

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

(a) **Process of Application.** Applications for a Massage Establishment License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police, the Neighborhood Services Administrator and the Building Official for their review and investigation. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted. The Neighborhood Services Administrator and the Building Official shall determine whether the structure of the proposed Massage Establishment complies with the requirements and standards of all applicable health, zoning, building code, fire and property maintenance ordinances, and all other applicable codes, standards and zoning requirements, provided the premises need not be designed or set up for the requirements of a Massage Establishment on the date of application, provided further that such requirements for a Massage Establishment are met prior to the first day of business. The Neighborhood Services Administrator and the Building Official shall report their findings to the License Clerk within ten (10) working days from the date the application is submitted. Upon the determination of the qualifications of the applicant and the receipt of the reports of the Neighborhood Services Administrator and the Building Official, the License Clerk shall schedule the application for review by the Governing Body at the earliest date possible with consideration for notice requirements established by law, provided that the application shall be approved or disapproved within forty-five (45) days from the date the application is submitted. The applicant shall be notified in writing of the date of the review by the Governing Body, and will be afforded an opportunity to be heard at such time. If inspection items related to structural design of the premises cannot be verified prior to the review by the Governing Body, the application may be approved contingent upon a final inspection prior to the issuance of the License.

(b) **Issuance of License.** The Governing Body shall review the application and shall approve the issuance of a License for a Massage Establishment, unless it is found that:

(1) The applicant, any stockholders holding more than 10% of the stock or any director or officer (if the applicant is a corporation), any partner or limited partner (if the applicant is a partnership), or any manager or other person principally in charge of the operation of the business, has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in connection therewith; or

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

(6) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's code or building, zoning, and health ordinances and regulations; or

(7) The manager or other person principally in charge of the operation of the business would be ineligible to receive a License under the provisions of this ordinance; or

(8) Any other application requirement has not been met.

Upon approval of the application by the Governing Body, the License Clerk shall issue the Massage Establishment License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the date of the disapproval.

5-621 Massage Establishment: Display of Licenses. A Massage Establishment shall at all times display in an open and conspicuous place its Massage Establishment License. It shall also display in an open and conspicuous place either a copy of the Identification Card of all Massage Therapists working at the Massage Establishment, or an identified color picture (at least 4 inches by 4 inches) of each Massage Therapist that provides the same information.

5-622 Massage Establishment: Inspection.

(a) **Inspection of Proposed Massage Establishment.** No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Neighborhood Services Administrator, or the Building Official, or his/her authorized representative has been completed. The Neighborhood Services Administrator, or the Building Official, or his/her authorized representative shall certify that the proposed Massage Establishment complies with all of the requirements of this ordinance and shall give such certification to the License Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of the premises, nor to preclude authorized inspection thereof.

(b) **Supplemental Inspections.** The License Clerk, the Police Department, the Neighborhood Services Administrator, the Building Official or his/her authorized representative may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this ordinance are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee License.

5-623 Massage Establishment: Facilities. No business shall be operated or conducted at any Massage Establishment without first complying with the following with the minimum [illegible] requirements:

(a) **Massage Rooms.** Rooms in which Massage Therapy is to be practiced or administered shall have at least fifty (50) square feet of clear floor area and shall [illegible] light level of not less than forty (40) foot-candles as measured three (3) feet above [illegible] floor. Such rooms shall contain a door incapable of being locked from the exterior [illegible] interior. Such rooms, or rooms immediately adjacent thereto, shall be equipped with cabinets for the storage of clean linen and chemicals and approved receptacles for the storage of soiled linen.

(b) **Dressing Rooms.** Provisions for a separate dressing room for each [illegible] available within all Massage Establishments, with individual lockers for each [illegible]. Doors to such dressing rooms shall open inward and shall be self-closing.

(c) **Toilet Facilities.** Toilet facilities shall be provided in convenient locations. When five or more employees and Patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. The separate toilet facilities shall be designated as to the sex accommodated therein.

(d) **Lavatories or Wash Basins.** Lavatories or wash basins shall be provided in either the toilet room or a vestibule with both hot and cold running water. Soap in a dispenser and sanitary towels shall also be provided.

(e) **Cleanliness of Establishment.** Every portion of a Massage Establishment, including appliances, shall be kept clean and operated in a sanitary condition.

(1) The walls shall be clean, and the walls shall be painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition.

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(2) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(f) **Towels and Linen.** When applicable, all Massage Establishments shall provide clean, laundered sheets and towels in sufficient quantity, and such items shall be laundered after each use thereof and stored in a sanitary manner. Towels, linen, and items for the personal use of employees and Patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for or by more than one Patron.

5-624 <u>**Massage Establishment: Operation Regulations.**</u> The operation of a Massage Establishment and the provision and performance of Massage Therapy shall be subject to the following regulations:

(a) **Hours.** Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day. Out Calls prescribed by a licensed healing arts practitioner shall cease between the hours of 9:00 p.m. and 8:00 a.m. each day.

(b) **Supervision.** The premises shall be supervised at all times when open for business. The Licensee or a person employed as a Massage Therapist shall personally supervise the business, and shall not violate or permit others to violate any applicable provision of this ordinance. The violation of any such provision by any agent or employee of the Licensee shall constitute a violation by the Licensee.

(c) **Separation of Sexes.** It shall be unlawful for Patrons of the opposite genderto receive treatment in the same room or the same quarters at the same time. Additionally, it shall also be unlawful for any person to be able to view or to be in the same room as persons of the opposite gender whose Specified Anatomical Areas are not fully covered.

(d) **Patron Attire.** No owner, manager, Massage Therapist or employee, while performing any task or service associated with the Massage Therapy, shall be present in any room with a Patron, or allow any other person to be present in a room with a Patron (excluding bathrooms, dressing rooms, or any room utilized for dressing purposes), unless the Patron's Specified Anatomical Areas are fully covered by towels, cloths or undergarments. Any contact with a Patron's genital area is strictly prohibited.

(e) **Employee Attire.** While performing or available to perform Massage Therapy or related services, all employees and Massage Therapists shall be fully clothed and covered, modestly attired, clean, and wearing clean outer garments. For purposes of this subsection, fully clothed and covered means a state of dress in which the covering shall be of an opaque material. Diaphanous or transparent clothing is prohibited. Additionally, the clothing must cover the employees and the Massage Therapists' chests at all times, and extend from a point not to exceed four (4) inches above the center of the knee cap to the base of the neck. Finally, the clothing shall be maintained in a clean and sanitary condition.

(f) **Identification Card.** All Massage Therapists shall be required to conspicuously display their valid Identification Card as required above.

(g) **Danger to Safety or Health.** No service shall be given which is clearly dangerous or harmful in the opinion of the Chief of Police, the Neighborhood Services Administrator or the Building Official, to the safety or health of any person, and after such notice in writing has been delivered to the Licensee from such director or officer.

(h) **Alcoholic Beverages.** No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any Licensed Massage Establishment, or during any Out Call; provided this restriction shall not apply to businesses where the Licensed Massage Therapy is accessory to the predominant business purpose of the establishment; provided further that no alcohol is permitted on that portion of the premises where the Massage Therapy occurs.

(i) **Conduct of Business.** All Licensees licensed under the provisions of this ordinance shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their employees which constitutes a violation of the provisions of this ordinance. Any violation of the city, state, or federal laws committed on the premises by any such Licensee or employee affecting the eligibility or suitability of such person to hold a License may be grounds for suspension or revocation of same.

5-625 <u>**Massage Establishment: Employee and Patron Registers.**</u>

(a) **Employees.** A Massage Establishment shall keep and maintain on the premises a current register of all employees showing such employee's name, address, position and license number (if applicable). Such register shall be open to inspection at all reasonable times by any city inspector or police officer.

(b) **Patrons.** A Massage Establishment shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year.

5-626 <u>**Massage Establishment: Restrictions on Place of Business.**</u>

a. **Operation of Massage Establishment.** Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment in a private residence or noncommercial business establishment is prohibited.

b. **Hotels and Motels.** No hotel or motel may receive a Massage Establishment License.

5-627 <u>**Massage Establishment: Revocation or Suspension of License.**</u> A Massage Establishment License may be revoked or suspended by the Governing Body after a public hearing before the Governing Body, and a determination that:

(a) A provision for the issuance of a Massage Establishment License has been violated; or

(b) The Licensee or its employee, including a Massage Therapist, has been convicted of any offense discussed in this ordinance or any violent felony, and the Licensee has actual or constructive knowledge of the violation or conviction; or

(c) The Licensee refused to permit a duly authorized police officer or city employee to inspect the premises or the operations of the Licensee; or

(d) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending a Massage Establishment License, the Governing Body shall give the Licensee at lease ten (10) days written notice of the charges and the opportunity to be heard by the Governing Body, at which time the Licensee may present evidence in response to the charges. A Licensee aggrieved by the decision of the Governing Body may appeal the decision to the Johnson County District Court as provided by law within thirty (30) days after the date of the revocation or suspension.

<u>**SECTION 5.**</u> This ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

PASSED by the Governing Body, the 19 day of June, 2000.

ADOPTED by the Governing body the 19 day of June, 2000.

[SEAL]

Peggy J. Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

NOTICE OF BUDGET HEARING

First published in The Legal Record, Tuesday, July 18, 2000.

State of Kansas
City/County
2001

NOTICE OF BUDGET HEARING

The governing body of
City of Leawood
will meet on the day of August 7, 2000, at 7:30 p.m. at the for the purpose of
hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of ad valorem tax.

Detailed budget information is available at
and will be available at this hearing.

BUDGET SUMMARY

Proposed Budget 2001 Expenditures and Amount of 2000 Ad Valorem Tax establish the maximum limits of the 2001 budget.
Est. Tax Rate is subject to change depending on the final assessed valuation.

	1999		2000		Proposed Budget 2001		
FUND	Prior Year Actual Expenditures	Actual Tax Rate *	Current Year Est of Expenditures	Actual Tax Rate *	Expenditures	Amount of 2000 Ad Valorem Tax	Est. Tax Rate *
General	18,546,153	15.594	21,076,384	15.157	27,446,154	3,396,040	12.453
Debt Service	5,070,320	7.562	5,427,367	6.229	6,838,464	4,221,427	9.453
Special Highway							
Golf Course	1,804,602		2,946,533		3,142,883		
Special Alcohol	194,480		203,625		223,867		
City Equipment	2,157,301		1,174,353		2,623,105		
City Capital Improvements	364,923		983,784		1,792,431		
Stormwater Capital Fund			63,000		575,400		
Special Parks & Recreation	150,255		334,900		373,663		
Arts Council	49,055		41,659		247,371		
Park Impact Fee	63,600		25,000		125,351		
Special Law Enforcement	34,950		29,781		30,946		
Leawood Historic Commissi	4,549		7,000		5,300		
Public Art Impact Fee					9,640		
Totals	28,380,702	23.456	32,360,586	21.396	43,249,731	3,857,861	21.906
Less: Transfers	1,472,962		1,785,193		3,236,392		
Net Expenditure	26,907,740		30,575,393		40,012,739		
Total Tax Levied	8,149,075		9,085,881		xxxxxxxxxxxxxxxx		
Assessed Valuation	342,420,621		386,351,878		449,373,673		

Outstanding Indebtedness, January 1,	1998	1999	2000
G.O. Bonds	30,230,000	39,540,600	35,675,000
Revenue Bonds	4,210,000	3,995,000	3,770,000
Other	19,300,000	5,500,000	9,100,000
Lease Pur Princ	1,759,141	1,511,793	2,208,314
Total	55,499,141	50,546,793	50,753,314

*Tax rates are expressed in mills

Martha Heizer

Clerk

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(i) **Conduct of Business.** All Licensees licensed under the provisions of this ordinance shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their employees which constitutes a violation of the provisions of this ordinance. Any violation of the city, state, or federal laws committed on the premises by any such Licensee or employee affecting the eligibility or suitability of such person to hold a License may be grounds for suspension or revocation of same.

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(a) A provision for the issuance of a Massage Establishment License has been violated; or

(b) The Licensee or its employee, including a Massage Therapist, has been convicted of any offense discussed in this ordinance or any violent felony, and the Licensee has actual or constructive knowledge of the violation or conviction; or

(c) The Licensee refused to permit a duly authorized police officer or city employee to inspect the premises or the operations of the Licensee; or

(d) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending a Massage Establishment License, the Governing Body shall give the Licensee at lease ten (10) days written notice of the charges and the opportunity to be heard by the Governing Body, at which time the Licensee may present evidence in response to the charges. A Licensee aggrieved by the decision of the Governing Body may appeal the decision to the Johnson County District Court as provided by law within thirty (30) days after the date of the revocation or suspension.

SECTION 5. This ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

PASSED by the Governing Body, the 19 day of June, 2000.

ADOPTED by the Governing body the 19 day of June, 2000.

[SEAL]

Peggy J. Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

ORDINANCE NO. 1866

AN ORDINANCE AMENDING SECTION 3-8 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE PLANNED NEIGHBORHOOD RETAIL; AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-8 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-8 CP-1 (PLANNED NEIGHBORHOOD RETAIL)

A) General Purpose and Description: Property zoned and developed as CP-1 Planned Neighborhood Retail shall be to provide for selected neighborhood retail business uses within the City. This district is limited to retail activities that are conducted wholly within the facility with noted exceptions. The intended purpose is to provide for neighborhood shopping centers properly landscaped to ensure open space and promote compatibility to surrounding neighborhoods.

B) Permitted Uses: In District CP-1 no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Art galleries, museums, and libraries

2) Artist studio

3) Bakery (retail only)

4) Banks, savings and loans, credit unions

5) Barber/beauty shops

6) Bicycle shop (sales/rental)

7) Books/stationery store

8) Camera/photo supply store

9) Clothing/accessory store

10) Computer sales/service

11) Convenience store

12) Drug store/health care supplies

13) Electronic sales and service

14) Flower/garden store

15) General offices

16) Gift/souvenir shop

17) Grocery store

18) Hardware store

19) Home accessory shops and boutiques

20) Jewelry store

21) Laundromat

22) Laundry/dry cleaners

23) Medical offices/clinic

24) Medical/dental lab

25) Movie rentals and sales

26) Music store (sales/service/rental)

27) Office supply

28) Personal services

29) Photographic studio

30) Restaurant (sit down/carry out)

31) Schools of private instruction

32) Sewing/fabric store

33) Shoe repair

34) Shoe store

35) Sporting goods (sales/rental)

36) Tailoring/alterations.

37) Toy/hobby shop

C) Accessory Uses: (See Section 4-1 of this ordinance).

D) Special Uses: (See Section 4-3 of this ordinance).

E) Temporary Uses: The following uses shall be permitted as temporary uses within the CP-1 District in accordance with Section 2-4.4 of this ordinance:

1) Reserved for future use.

2) Promotional fairs, etc.

F) Bulk Regulations:

1) Front Yard Setback: 40 feet for buildings and structures 25 feet for surface parking (loading and service areas prohibited)

2) Side Yard Setback: 40 feet for buildings and structures 25 feet for surface parking, loading, and service areas

3) Rear Yard Setback: (Same as side yard)

4) Height Limit: 3 stories

G) Performance Standards:

1) No wholesale sales shall be conducted.

2) No merchandise or equipment shall be stored or displayed outside a building.

3) All products shall be sold and all services rendered inside a building except that banks and savings and loan establishments may have drive-up or walk-up service.

4) No smoke, radiation, vibration or concussion, heat or glare shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be discharged.

5) Alcoholic beverages and cereal malt beverages shall not be sold for consumption on the premises except that places serving food for consumption inside the building may serve cereal malt beverages provided the wholesale cost of the

cereal malt beverage sold does not exceed 20% of the gross sales of the establishment on an annual basis.

6) In no case shall the noise level exceed 60 dB A at repeated intervals or for a sustained length of time measured at any point along the property line.

7) Loading docks and service areas are not permitted on a street side of a building unless completely landscaped and totally screened from view and approved as a part of the development plan by the Plan Commission.

H) Open Space: Not less than 20% of the lot area shall be open space exclusive of buildings, parking facilities, and access drives. This open space shall be devoted to plazas, courts or other landscaped areas.

I) Building Coverage: Not more than 25% of the lot area shall be covered by buildings.

J) Parking Requirements: (See Section 4-4 of this ordinance).

K) Landscaping and Screening Requirements: (See Section 4-6 of this ordinance).

L) Signs: (See Section 4-5 of this ordinance).

M) Seasonal flower and plant sales

1) Seasonal flower and plant sales events shall not exceed a total of ninety (90) days per year and shall remain subject to the following requirements:

a) Merchandise shall be limited to bedding plants, flowers, pumpkins, straw bales (10 bales maximum within 25 feet of any structures) and evergreen ornamentals.

b) Merchandise shall be displayed at or near the store frontage without impeding ingress / egress, or general convenience to pedestrian or vehicular traffic.

c) Outdoor storage of the following material, equipment and accessories shall be prohibited: mulch, manure, soil, rock, sand, lime, fertilizer, landscape construction materials, wood pallets, trailers, tents and greenhouses.

2) Merchants shall make application to the City of Leawood and shall provide a scaled plot plan, which accurately depicts the proposed location of the sales event. The applicant shall also provide verification of the following items:

a) Preservation of all existing parking spaces and emergency access corridors;

b) Type and quantity of material to be sold;

c) Proposed advertising / signage;

d) Method of trash containment;

e) Sales start and completion dates.

Duly received applications shall be reviewed within five (5) business days from the date of submittal receipt. Under no circumstance shall the sale event commence without the applicant first obtaining the required Administrative Special Use Permit.

Section 2. Existing Section Repealed. That existing Section 3-8 of the Leawood Development Ordinance is hereby repealed.

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of June, 2000.

Approved by the Mayor the 19th day of June, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1866

Publication Fees: $87.00

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1866--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$87.00

ORDINANCE NO. 1866

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1866

AN ORDINANCE AMENDING SECTION 3-8 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE PLANNED NEIGHBORHOOD RETAIL; AND REPEALING EXISTING SECTION.

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19) Home accessory shops and boutiques
20) Jewelry store
21) Laundromat
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C) Accessory Uses: (See Section 4-1 of this ordinance).

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3) Rear Yard Setback: (Same as side yard)
4) Height Limit: 3 stories

G) Performance Standards:

1) No wholesale sales shall be conducted.
2) No merchandise or equipment shall be stored or displayed outside a building.
3) All products shall be sold and all services rendered inside a building except that banks and savings and loan establishments may have drive-up or walk-up service.
4) No smoke, radiation, vibration or concussion, heat or glare shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be discharged.
5) Alcoholic beverages and cereal malt beverages shall not be sold for consumption on the premises except that places serving food for consumption inside the building may serve cereal malt beverages provided the wholesale cost of the cereal malt beverage sold does not exceed 20% of the gross sales of the establishment on an annual basis.
6) In no case shall the noise level exceed 60 dB A at repeated intervals or for a sustained length of time measured at any point along the property line
7) Loading docks and service areas are not permitted on a street side of a building unless completely landscaped and totally screened from view and approved as a part of the development plan by the Plan Commission

H) Open Space: Not less than 20% of the lot area shall be open space exclusive of buildings, parking facilities, and access drives. This open space shall be devoted to plazas, courts or other landscaped areas.

I) Building Coverage: Not more than 25% of the lot area shall be covered by buildings.

J) Parking Requirements: (See Section 4-4 of this ordinance).

K) Landscaping and Screening Requirements: (See Section 4-6 of this ordinance).

L) Signs: (See Section 4-5 of this ordinance).

M) Seasonal flower and plant sales

1) Seasonal flower and plant sales events shall not exceed a total of ninety (90) days per year and shall remain subject to the following requirements:

a) Merchandise shall be limited to bedding plants, flowers, pumpkins, straw bales (10 bales maximum within 25 feet of any structures) and evergreen ornamentals.

b) Merchandise shall be displayed at or near the store frontage without impeding ingress / egress, or general convenience to pedestrian or vehicular traffic.

c) Outdoor storage of the following material, equipment and accessories shall be prohibited: mulch, manure, soil, rock, sand, lime, fertilizer, landscape construction materials, wood pallets, trailers, tents and greenhouses.

CONTINUED FROM PRECEDING PAGE

2) Merchants shall make application to the City of Leawood and shall provide a scaled plot plan, which accurately depicts the proposed location of the sales event. The applicant shall also provide verification of the following items:

a) Preservation of all existing parking spaces and emergency access corridors;

b) Type and quantity of material to be sold;

c) Proposed advertising / signage;

d) Method of trash containment;

e) Sales start and completion dates.

Duly received applications shall be reviewed within five (5) business days from the date of submittal receipt. Under no circumstance shall the sale event commence without the applicant first obtaining the required Administrative Special Use Permit.

Section 2. Existing Section Repealed. That existing Section 3-8 of the Leawood Development Ordinance is hereby repealed.

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of June, 2000.

Approved by the Mayor the 19th day of June, 2000.

(SEAL)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

ORDINANCE NO. 1865

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 141ST STREET AND MISSION ROAD (MISSION PRAIRIE), FROM AG (AGRICULTURAL) TO R-1 (SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

The North half of the South half of the Northwest quarter of the Southwest quarter of Section 34, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas, except any part in roads

now zoned AG, is hereby rezoned to R-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 5th day of June, 2000.

Approved by the Mayor the 5th day of June, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1865

Publication Fees: $18.32

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1865--6/6/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JUNE 7, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

ORDINANCE NO.1865

First published in The Legal Record, Tuesday, June 6, 2000.

ORDINANCE NO. 1865

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 141ST STREET AND MISSION ROAD (MISSION PRAIRIE), FROM AG (AGRICULTURAL) TO R-1 (SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

The North half of the South half of the Northwest quarter of the Southwest quarter of Section 34, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas, except any part in roads

now zoned AG, is hereby rezoned to R-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 5th day of June, 2000.

Approved by the Mayor the 5th day of June, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

$18.32

ORDINANCE NO. 1864

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR THE WOODS.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainge easement more particularly designated and described, to wit:

From Village Associates, L.L.C.: Part of the Northeast Quarter of Section 16, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas. A strip of land 15.00 feet in width across part of Tract C, The Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded in Book 113, at Page 3, in the Office of the Register of Deeds, in Johnson County, Kansas, lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline: Commencing at the Northwest corner of said Tract C; thence N 87°45'35" E, along the North line of said Tract C, a distance of 60.07 feet to the true point of beginning; thence S 17°42'00" W, a distance of 131.09 feet; thence S 18°14'10" E, a distance of 29.25 feet; thence S 22° 09'31" W, a distance of 149.63 feet; thence S 0°36'47" W, a distance of 28.69 feet; thence S 15°26'15" W, a distance of 44.77 feet to a point on the South line of said Tract C, said point being the point of terminus of this description. All side lines are to be extended or shortened to meet at angle points and to terminate on the North and South lines of said Tract C.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000.

Approved by the Mayor the 15th day of May, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1864

Publication Fees: $18.32

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1864--5/16/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 17, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

ORDINANCE NO. 1864

First published in The Legal Record, Tuesday, May 16, 2000.

ORDINANCE NO. 1864

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR THE WOODS.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainge easement more particularly designated and described, to wit:

From Village Associates, L.L.C.: Part of the Northeast Quarter of Section 16, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas. A strip of land 15.00 feet in width across part of Tract C, The Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded in Book 113, at Page 3, in the Office of the Register of Deeds, in Johnson County, Kansas, lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:. Commencing at the Northwest corner of said Tract C; thence N 87°45'35" E, along the North line of said Tract C, a distance of 60.07 feet to the true point of beginning; thence S 17°42'00" W, a distance of 131.09 feet; thence S 18°14'10" E, a distance of 29.25 feet; thence S 22°09'31" W, a distance of 149.63 feet; thence S 0°36'47" W, a distance of 28.69 feet; thence S 15°26'15" W, a distance of 44.77 feet to a point on the South line of said Tract C, said point being the point of terminus of this description. All side lines are to be extended or shortened to meet at angle points and to terminate on the North and South lines of said Tract C.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000.

Approved by the Mayor the 15th day of May, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

$18.32

ORDINANCE NO. 1863

AN ORDINANCE REZONING PROPERTY (WILSHIRE PLACE) LOCATED AT APPROXIMATELY 132ND STREET AND HIGH DRIVE FROM AG (AGRICULTURAL) TO RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

Parts of the Southwest One-Quarter and the Southeast One-Quarter of Section 27, Township 13 South, Range 25 East in the City of Leawood, Johnson County, Kansas, being more particularly described as follows: Commencing at the center of the above-described Section 27; thence South 02° 08'00" East on the West line of the said Southeast One-Quarter a distance of 399.34 feet to the Southwest Corner of The Greenbrier of Leawood, a subdivision of land in the said City of Leawood; said point being the POINT OF BEGINNING; thence North 87° 52'00" East on the South line of said subdivision, a distance of 176.07 feet to a point; thence South 75° 00'00" East on the said South line, a distance of 535.10 feet to a point; thence South 69° 24'55" East on the said South line, a distance of 176.55 feet to a point; thence South 59° 41'21" East on the said South line, a distance of 135.98 feet to a point; thence South 67° 00'00" East on the said South line, a distance of 362.78 feet to a point; thence South 65° 28'23" East on the said South line, a distance of 407.10 feet to a point; thence South 58° 20'08" East on the said South line, a distance of 235.05 feet to a point; thence South 62° 00'00" East on the said South line, a distance of 80.00 feet to the most Southerly corner of said subdivision; thence South 28° 00'00" West a distance of 84.31 feet to a point of curvature; thence Southwesterly on a curve to the right having a radius of 900.00 feet, a Central Angle of 59° 55'28" and a Length of 941.29 feet to a point; thence South 87° 55'28" West a distance of 2425.58 feet to a point on the West line of the Northeast One-Quarter of the Southwest One-Quarter of said Section 27; thence North 02° 04'32" West on the said West line and on the East line of Lots 18 and 17, Block 12, Waterford Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 617.28 feet to a point; thence North 21° 37'16" West on the East line of Lots 17, 16 and 15, Block 12, of said subdivision, a distance of 213.55 feet to a point; thence North 78° 53'19" East on the South line of Lots 13, 12, 11, 10, 9 and 8, Block 12 of said subdivision a distance of 622.24 feet to a point; thence North 59° 46'00" East on the South line of Lots 8, 7 and 6, Block 12, of said subdivision,

a distance of 304.58 feet to a point; thence North 69°53'01" East on the South line of Lot 5, Block 12, of said subdivision, a distance of 95.12 feet to a point; thence North 78° 19'49" East on the South line of Lot 4, Block 12, of said subdivision, a distance of 94.80 feet to a point; thence North 88°31'57" East on the South line of Lot 3, Block 12, of said subdivision, a distance of 95.30 feet to a point; thence South 87°33'34" East on the South line of Lots 1 and 2, Block 12, of said subdivision, a distance of 234.20 feet to a point on the East line of the Southwest One-Quarter of said Section 27; thence North 02°08'00" West on the said East line a distance of 240.64 feet to the POINT OF BEGINNING and containing 71.6857 acres, more or less

now zoned AG, is hereby rezoned RP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000

Approved by the Mayor the 15th day of May, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

Martha Heizer

To: Diane Binckley
Subject: RE: Wilshire Place

Will do!!!

-----Original Message-----
From: Diane Binckley
Sent: Monday, May 14, 2001 10:55 AM
To: Martha Heizer
Subject: Wilshire Place

Martha,
It is okay to publish the rezoning for Wilshire Place now.
thanks,

Diane M. Binckley, AICP
Planning & Development Director
City of Leawood
(913) 339-6700 ext.163

ORD1863

Publication Fees: $35.49

The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1863--5/15/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:

MAY 16, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$35.49

ORDINANCE NO. 1863

First published in The Legal Record, Tuesday, May 15, 2001.

ORDINANCE NO. 1863

AN ORDINANCE REZONING PROPERTY (WILSHIRE PLACE) LOCATED AT APPROXIMATELY 132ND STREET AND HIGH DRIVE FROM AG (AGRICULTURAL) TO RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

Parts of the Southwest One-Quarter and the Southeast One-Quarter of Section 27, Township 13 South, Range 25 East in the City of Leawood, Johnson County, Kansas, being more particularly described as follows: Commencing at the center of the above-described Section 27; thence South 02° 08'00" East on the West line of the said Southeast One-Quarter a distance of 399.34 feet to the Southwest Corner of The Greenbrier of Leawood, a subdivision of land in the said City of Leawood; said point being the POINT OF BEGINNING; thence North 87 52'00" East on the South line of said subdivision, a distance of 176.07 feet to a point; thence South 75°00'00" East on the said South line, a distance of 535.10 feet to a point; thence South 69° 24'55" East on the said South line, a distance of 176.55 feet to a point; thence South 59° 41'21" East on the said South line, a distance of 135.98 feet to a point; thence South 67° 00'00" East on the said South line, a distance of 362.78 feet to a point; thence South 65° 28'23" East on the said South line, a distance of 407.10 feet to a point; thence South 58° 20'08" East on the said South line, a distance of 235.05 feet to a point; thence South 62° 00'00" East on the said South line, a distance of 80.00 feet to the most Southerly corner of said subdivision; thence South 28°00'00" West a distance of 84.31 feet to a point of curvature; thence Southwesterly on a curve to the right having a radius of 900.00 feet, a Central Angle of 59° 55'28" and a Length of 941.29 feet to a point; thence South 87° 55'28" West a distance of 2425.58 feet to a point on the West line of the Northeast One-Quarter of the Southwest One-Quarter of said Section 27; thence North 02° 04'32" West on the said West line and on the East line of Lots 18 and 17, Block 12, Waterford, Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 617.28 feet to a point; thence North 21' 37'16" West on the East line of Lots 17, 16 and 15, Block 12, of said subdivision, a distance of 213.55 feet to a point; thence North 78°53'19" East on the South line of Lots 13, 12, 11, 10, 9 and 8, Block 12 of said subdivision a distance of 622.24 feet to a point; thence North 59° 46'00" East on the South line of Lots 8, 7 and 6, Block 12, of said subdivision, a distance of 304.58 feet to a point; thence North 69° 53'01" East on the South line of Lot 5, Block 12, of said subdivision, a distance of 95.12 feet to a point; thence North 78° 19'49" East on the South line of Lot 4, Block 12, of said subdivision, a distance of 94.80 feet to a point; thence North 88° 31'57" East on the South line of Lot 3, Block 12, of said subdivision, a distance of 95.30 feet to a point; thence South 87° 33'34" East on the South line of Lots 1 and 2, Block 12, of said subdivision, a distance of 234.20 feet to a point on the East line of the Southwest One-Quarter of said Section 27; thence North 02° 08'00" West on the said East line a distance of 240.64 feet to the POINT OF BEGINNING and containing 71.6857 acres, more or less

now zoned AG, is hereby rezoned RP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000

Approved by the Mayor the 15th day of May, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

ORDINANCE NO. 1862

AN ORDINANCE ACCEPTING DEEDS OF DEDICATION AND EASEMENTS FOR NALL AVENUE WIDENING FROM 119TH STREET TO 107TH STREET.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts deeds of dedication and easements more particularly designated and described, to wit:

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 87° 37'49" E along the North line of said Lot 1, a distance of 33.34 feet to the true point of beginning; thence S 01°43'05" E, a distance of 5.00 feet; thence S 28°16'34" W, a distance of 42.72 feet; thence S 01° 41'29" E, a distance of 349.61 feet; thence S 88°18'31" W, a distance of 4.15 feet to the Easterly right-of-way of Nall Avenue; thence N 03° 03'02" W along said Easterly right-of-way, a distance of 330.92 feet; thence N 01°41'29" W along said Easterly right-of-way, a distance of 27.46 feet; thence N 43°18'34" E along said Easterly right-of-way, a distance of 47.15 feet to the true point of beginning; said parcel of land containing 3,347 square feet, more or less.

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 20.00 feet; thence S 52°41'44" E, a distance of 32.17 feet to the South line of said Lot 1, said point lying on a curve, concave southerly, having a radius of 1300.00 feet, and an initial tangent bearing of S 89°24'38" W; thence westerly along said South line of Lot 1 through a central angle of 01° 06'07", a distance of 25.00 feet to the point of beginning; said parcel of land containing 249 square feet, more or less.

From Nooney Income Fund (retaining wall easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 87°37'49" E along the North line of said Lot 1, a distance of 33.34 feet; thence S 01°43'05" E, a distance of 5.00 feet; thence S 28°16'34" W, a distance of 18.70 feet to the true point of beginning; thence S 28°16'34" W, a distance of 24.02 feet; thence S 01° 41'29" E, a distance of 309.05 feet; thence N 88°18'31" E, a distance of 12.00 feet; thence N 01°41'29" W, a distance of 329.86 feet to the true point of beginning; said parcel of land containing 3,833 square feet, more or less.

From Nooney Income Fund (utility easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Lot 1; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 208.97 feet to the true point of beginning; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 34.91 feet; thence N 58° 44'44" E, a distance of 11.50 feet; thence S 01° 41'29" E, a distance of 40.58 feet; thence S 88° 18'31" W, a distance of 10.00 feet to the true point of beginning; said parcel of land containing 377 square feet, more or less.

From Commerce Bank, National Association (traffic signal easement): All that part of Lot 1, LEAWOOD COMMONS, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 88°18'31" E along the South line of said Lot 1, a distance of 10.00 feet; thence N 46°41'29" W, a distance of 14.14 feet to the West line of said Lot 1; thence S 01° 41'29" E along said West line of Lot 1, a distance of 10.00 feet to the point of beginning; said parcel of land containing 50 square feet, more or less.

Section 2. That copies of said easements and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1862

Publication Fees: $35.49

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1862--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

MAY 10, 2000

Patricia A. Dziadura
Notary Public

PATRICIA A. DZIADURA
Notary Public - State of Kansas
My Appt. Expires

My appointment expires: February 9, 2001.

$35.49

ORDINANCE NO. 1862

First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1862

AN ORDINANCE ACCEPTING DEEDS OF DEDICATION AND EASEMENTS FOR NALL AVENUE WIDENING FROM 119TH STREET TO 107TH STREET.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts deeds of dedication and easements more particularly designated and described, to wit:

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 87° 37'49" E along the North line of said Lot 1, a distance of 33.34 feet to the true point of beginning; thence S 01° 43'05" E, a distance of 5.00 feet; thence S 28° 16'34" W, a distance of 42.72 feet; thence S 01° 41'29" E, a distance of 349.61 feet; thence S 88° 18'31" W, a distance of 4.15 feet to the Easterly right-of-way of Nall Avenue; thence N 03° 03'02" W along said Easterly right-of-way, a distance of 330.92 feet; thence N 01° 41'29" W along said Easterly right-of-way, a distance of 27.46 feet; thence N 43° 18'34" E along said Easterly right-of-way, a distance of 47.15 feet to the true point of beginning; said parcel of land containing 3,347 square feet, more or less.

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 20.00 feet; thence S 52° 41'44" E, a distance of 32.17 feet to the South line of said Lot 1, said point lying on a curve, concave southerly, having a radius of 1300.00 feet, and an initial tangent bearing of S 89° 24'38" W; thence westerly along said South line of Lot 1 through a central angle of 01° 06'07", a distance of 25.00 feet to the point of beginning; said parcel of land containing 249 square feet, more or less.

From Nooney Income Fund (retaining wall easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 87° 37'49" E along the North line of said Lot 1, a distance of 33.34 feet; thence S 01° 43'05" E, a distance of 5.00 feet; thence S 28° 16'34" W, a distance of 18.70 feet to the true point of beginning; thence S 28° 16'34" W, a distance of 24.02 feet; thence S 01° 41'29" E, a distance of 309.05 feet; thence N 88° 18'31" E, a distance of 12.00 feet; thence N 01° 41'29" W, a distance of 329.86 feet to the true point of beginning; said parcel of land containing 3,833 square feet, more or less.

From Nooney Income Fund (utility easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Lot 1; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 208.97 feet to the true point of beginning; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 34.91 feet; thence N 58° 44'44" E, a distance of 11.50 feet; thence S 01° 41'29" E, a distance of 40.58 feet; thence S 88° 18'31" W, a distance of 10.00 feet to the true point of beginning; said parcel of land containing 377 square feet, more or less.

From Commerce Bank, National Association (traffic signal easement): All that part of Lot 1, LEAWOOD COMMONS, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 88° 18'31" E along the South line of said Lot 1, a distance of 10.00 feet; thence N 46° 41'29" W, a distance of 14.14 feet to the West line of said Lot 1; thence S 01° 41'29" E along said West line of Lot 1, a distance of 10.00 feet to the point of beginning; said parcel of land containing 50 square feet, more or less.

Section 2. That copies of said easements and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

ORDINANCE NO. 1861

AN ORDINANCE LEVYING AN ADDITIONAL CITY RETAILERS' SALES TAX IN THE AMOUNT OF ONE-EIGHTH OF ONE PERCENT (.125%) IN ADDITION TO THE ONE PERCENT (1.0%) CURRENTLY LEVIED, WITHIN THE CITY OF LEAWOOD, KANSAS, EFFECTIVE JULY 1, 2000 AND ENDING JUNE 30, 2005.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1 Levy of Tax and Expiration of Tax. A majority of the electors of the City of Leawood having approved, at an election held April 4, 2000, the levying of an additional one-eighth of one percent (.125%) City Retailers' Sales Tax in the City of Leawood, Kansas, in addition to the one percent (1.0%) currently levied, which revenue will fund the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources, as authorized by K.S.A. 12-187 et seq., as amended, there is hereby levied an additional City Retailers' Sales Tax in the amount of one-eighth of one percent (.125%) beginning on July 1, 2000 and ending on June 30, 2005. Such tax shall be in addition to the one percent (1.0%) City Retailers' Sales Tax currently levied in the City of Leawood, Kansas.

SECTION 2 Pledge of Revenue The revenues derived from the levy of the additional City Retailers' Sales Tax levied by this Ordinance are hereby pledged to paying the costs of the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources.

SECTION 3 Collection of Tax The additional City Retailers' Sales Tax shall be identical in its applications and exemptions therefrom to the Kansas Retailers' Sales Tax Act, and all laws and administrative rules and regulations of the Kansas Department of Revenue relating to the State Retailers' Sales Tax insofar as such laws and regulations may be made applicable. The services of the Kansas Department of Revenue shall be utilized to administer, enforce and collect such additional City Retailers' Sales Tax.

SECTION 4 Take Effect This Ordinance shall be published in the official City newspaper, and a copy duly certified shall be submitted to the State Director of Taxation.

PASSED this 1st day of May, 2000 by the Governing Body of the City of Leawood, Kansas.

APPROVED by the Mayor of the City of Leawood, Kansas, this 1st day of May, 2000.

(SEAL)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM

Patricia A. Bennett, City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1861

Publication Fees: $18.32

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1861--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 10, 2000

Patricia A. Dziadura
Notary Public

PATRICIA A. DZIADURA
Notary Public - State of Kansas
My Appt. Expires

My appointment expires: February 9, 2001.

ORDINANCE NO. 1861

First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1861

AN ORDINANCE LEVYING AN ADDITIONAL CITY RETAILERS' SALES TAX IN THE AMOUNT OF ONE-EIGHTH OF ONE PERCENT (.125%) IN ADDITION TO THE ONE PERCENT (1.0%) CURRENTLY LEVIED, WITHIN THE CITY OF LEAWOOD, KANSAS, EFFECTIVE JULY 1, 2000 AND ENDING JUNE 30, 2005.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1 Levy of Tax and Expiration of Tax. A majority of the electors of the City of Leawood having approved, at an election held April 4, 2000, the levying of an additional one-eighth of one percent (.125%) City Retailers' Sales Tax in the City of Leawood, Kansas, in addition to the one percent (1.0%) currently levied, which revenue will fund the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources, as authorized by K.S.A. 12-187 et seq., as amended, there is hereby levied an additional City Retailers' Sales Tax in the amount of one-eighth of one percent (.125%) beginning on July 1, 2000 and ending on June 30, 2005. Such tax shall be in addition to the one percent (1.0%) City Retailers' Sales Tax currently levied in the City of Leawood, Kansas.

SECTION 2 Pledge of Revenue The revenues derived from the levy of the additional City Retailers' Sales Tax levied by this Ordinance are hereby pledged to paying the costs of the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources.

SECTION 3 Collection of Tax The additional City Retailers' Sales Tax shall be identical in its applications and exemptions therefrom to the Kansas Retailers' Sales Tax Act, and all laws and administrative rules and regulations of the Kansas Department of Revenue relating to the State Retailers' Sales Tax insofar as such laws and regulations may be made applicable. The services of the Kansas Department of Revenue shall be utilized to administer, enforce and collect such additional City Retailers' Sales Tax.

SECTION 4 Take Effect. This Ordinance shall be published in the official City newspaper, and a copy duly certified shall be submitted to the State Director of Taxation.

PASSED this 1st day of May, 2000 by the Governing Body of the City of Leawood, Kansas.

APPROVED by the Mayor of the City of Leawood, Kansas, this 1st day of May, 2000.

(S E A L)

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM

Patricia A. Bennett, City Attorney

$18.32

ORDINANCE NO. 1860

AN ORDINANCE REZONING PROPERTY (IRONHORSE CENTRE) LOCATED AT THE SOUTHEAST CORNER OF 151ST STREET AND NALL AVENUE FROM AG (AGRICULTURAL) TO CP-1 (PLANNED NEIGHBORHOOD RETAIL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A part of the North 1/2 of the Northwest 1/4 of Section 9, Township 14, Range 25, City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Northwest 1/4; thence N 87° 18'10" E along the North line of said Northwest 1/4 a distance of 1,417.73 feet; thence S 12° 53'12" W a distance of 637.22 feet; thence S 04° 17'06" E a distance of 181.49 feet; thence S 88° 38'48" W a distance of 106.28 feet; thence N 61° 36'58" W a distance of 1,032.04 feet; thence S 87° 43'19" W a distance of 264.32 feet to a point on the West line of said Northwest 1/4; thence N 02° 03'42" W along said West line a distance of 258.01 feet to the Point of Beginning, containing 15.30 acres, more or less

now zoned AG, is hereby rezoned CP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1860

Publication Fees: $29.48

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1860--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

MAY 10, 2000

Patricia A. Dziadura
Notary Public

PATRICIA A. DZIADURA
Notary Public - State of Kansas
My Appt. Expires

My appointment expires: February 9, 2001.

ORDINANCE NO. 1860

First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1860

AN ORDINANCE REZONING PROPERTY (IRONHORSE CENTRE) LOCATED AT THE SOUTHEAST CORNER OF 151ST STREET AND NALL AVENUE FROM AG (AGRICULTURAL) TO CP-1 (PLANNED NEIGHBORHOOD RETAIL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A part of the North 1/2 of the Northwest 1/4 of Section 9, Township 14, Range 25, City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Northwest 1/4; thence N 87° 18'10" E along the North line of said Northwest 1/4 a distance of 1,417.73 feet; thence S 12° 53'12" W a distance of 637.22 feet; thence S 04° 17'06" E a distance of 181.49 feet; thence S 88° 38'48" W a distance of 105.28 feet; thence N 61° 36'58" W a distance of 1,032.04 feet; thence S 87° 43'19" W a distance of 264.32 feet to a point on the West line of said Northwest 1/4; thence N 02° 03'42" W along said West line a distance of 258.01 feet to the Point of Beginning, containing 15.30 acres, more or less

now zoned AG, is hereby rezoned CP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

$29.48

ORDINANCE NO. 1859

AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF, LOCATED AT APPROXIMATELY 111TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, *et seq.*, and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

> A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.
>
> Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;
>
> Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance

of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, inspect, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage, :

TO WIT:
A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described "deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 1st day of May, 2000.

APPROVED by the Mayor this 1st day of May, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

P:\vacate\42111.DOC
VC2-00-001

3115847

STATE OF KANSAS]
COUNTY OF JOHNSON] SS
FILED FOR RECORD

N/C 2000 MAY 10 A 8: 26 .2

SARA F. ULLMANN
REGISTER OF DEEDS

ORDINANCE NO. 1859

AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF, LOCATED AT APPROXIMATELY 111TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance

ret City of Leawood
4800 Town Center Dr
Leawood KS 66211

N/C

BOOK 6556 PAGE 990

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VC2-00-001

of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, inspect, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage, :

TO WIT:
A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described "deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 1st day of May, 2000.

APPROVED by the Mayor this 1st day of May, 2000.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

P:\vacate\42111.DOC
VC2-00-001

CERTIFICATE

State of Kansas)
County of Johnson)
City of Leawood)

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1859 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said City this 4th day of May, 2000.

(SEAL)

Martha Heizer

Orig. w/Res #1516

PETITION FOR VACATION OF RIGHT OF WAY

COMES NOW Hallbrook Office Center, L.L.C., and files this petition with the City Clerk of the City of Leawood, Kansas praying for vacation of the dedicated right of way legally described as follows:

TO WIT:

[See attached Exhibit "A"]

Petitioner further states that, after publication by the Governing Body of the City of Leawood at least once 20 days prior to the date of hearing in a newspaper of general circulation in the vicinity, then this petition shall be presented to the Governing Body of the City of Leawood, Kansas, for a hearing thereon, and that at such time and place, all persons interested can appear and be heard under the petition.

Dated this 23rd day of March, 2000.

PETITIONER:

Mel J. Lavery

Mel J. Lavery, Manager

VERIFICATION

STATE OF KANSAS]
] ss.
COUNTY OF JOHNSON]

BE IT REMEMBERED, that on this 23 day of March 2000, before me, the undersigned, a Notary Public in and for said County and State, came Mel J. Lavery, Manager, who is known to me to be such officer and who is known to me to be the same person who executed the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

IT WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

NOTARY PUBLIC STATE OF KANSAS | JULIE A. MINEGAR | My Appt. Exp. 06-25-2003

Julie A. Minegar

Notary Public

My Commission Expires: 06-25-2003

K:\BERT\PETITION.DOC
Rev. 3/22/00

Exhibit "A"
111th. Street Vacation
State Line Road to Hallbrook Golf Course

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of Fractional Section 11, Township 13 South, Range 25 East and the North Half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast Corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet;
Thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet (calculated) 1003.72 feet (deed) to a point on the West line of said South Half;
Thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet (calculated) 142.57 (deed) to a point on the existing East boundary of the Hallbrook Country Club Golf Course;
Thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet;
Thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet (calculated) 127.93 feet (deed) to a point on the East line of the said Northeast Quarter;
Thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 (calculated) 1003.87 feet (deed) to the East line of the said North Half;
Thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less.
The above described "Deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

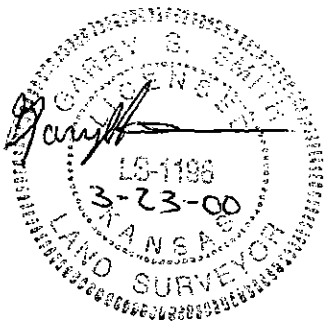
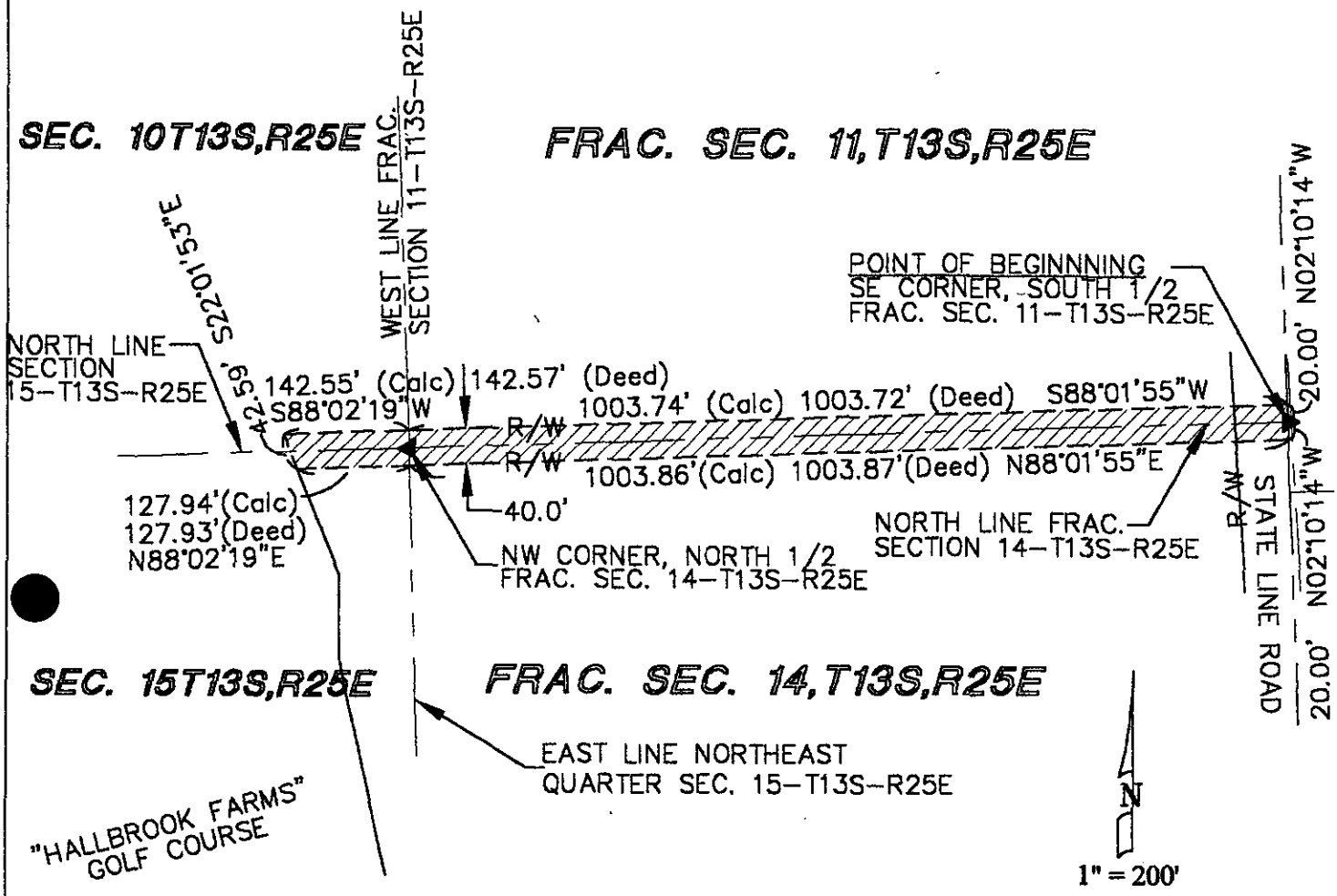
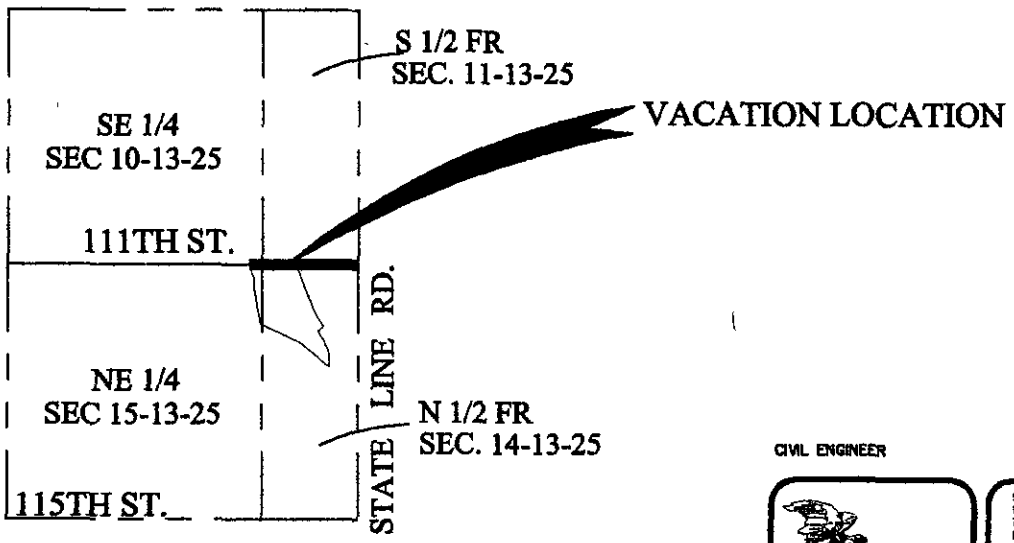


EXHIBIT "A"
FOR
VACATION OF 111TH. STREET
STATE LINE ROAD TO HALLBROOK GOLF COURSE
CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS





VICINITY MAP
N.T.S.

CIVIL ENGINEER
Continental
CONSULTING ENGINEERS, INC
9000 STATE LINE ROAD
LEAWOOD, KANSAS 66206
TEL. (913) 642-8642
FAX (913) 642-6941
NSPE APWA ICBO

2-4-00

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1859

Publication Fees: $48.54

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1859--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 10, 2000

Patricia A. Dziadura
Notary Public

PATRICIA A. DZIADURA
Notary Public - State of Kansas
My Appt. Expires

My appointment expires: February 5, 2001.

$48.54

ORDINANCE NO. 1859

First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1859

AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF, LOCATED AT APPROXIMATELY 111TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course: thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, inspect, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage.

TO WIT:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course: thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described "deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 1st day of May, 2000.

APPROVED by the Mayor this 1st day of May, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

ORDINANCE NO. 1858

AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described permanent drainage easement and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That the following described real estate, previously dedicated as a permanent drainage easement in a document filed with the Johnson County Register of Deeds Office in Book 113, Page 3, should be and is hereby vacated, to wit:

> An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as shown on the Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded at the Johnson County Register of Deeds Office in Book 113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:
>
> Commencing at the Southeast corner of Lot 38, Brittany Court replat, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, said corner also being an angle point of said Tract "C," The Woods; thence South 87°45'35" West along the North line of said Tract "C," a distance of 133.58 feet to a point on the centerline of said existing drainage easement, said point also being the True Point of Beginning; thence South 15°13'57" West, along said centerline of existing drainage easement, a distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C". All side lines are to be extended or shortened to terminate on the north and south lines of said Tract "C".

SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing or reconstructing any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

P:\vacate\42TRACTC.DOC
VC1-00-001

3115848

STATE OF KANSAS
COUNTY OF JOHNSON } SS
FILED FOR RECORD

N/C

2000 MAY 10 A 8:26.3

SARA F. ULLMANN
REGISTER OF DEEDS

ORDINANCE NO. 1858

AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described permanent drainage easement and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That the following described real estate, previously dedicated as a permanent drainage easement in a document filed with the Johnson County Register of Deeds Office in Book 113, Page 3, should be and is hereby vacated, to wit:

> An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as shown on the Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded at the Johnson County Register of Deeds Office in Book 113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:
>
> Commencing at the Southeast corner of Lot 38, Brittany Court replat, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, said corner also being an angle point of said Tract "C," The Woods; thence South 87°45'35" West along the North line of said Tract "C," a distance of 133.58 feet to a point on the centerline of said existing drainage easement, said point also being the True Point of Beginning; thence South 15°13'57" West, along said centerline of existing drainage easement, a distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C". All side lines are to be extended or shortened to terminate on the north and south lines of said Tract "C".

Ret City of Leawood
4800 Town Center Dr
Leawood KS 66211

n/c

BOOK 6556 PAGE 994

P:\vacate\42TRACTC.DOC
VC1-00-001

SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing or reconstructing any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

[SEAL]

Peggy Dunn

Peggy Dunn, Mayor

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler

Lisa R. Wetzler, Assistant City Attorney

BOOK 6556 PAGE 995

P:\vacate\42TRACTC.DOC
VC1-00-001

CERTIFICATE

State of Kansas)
County of Johnson)
City of Leawood)

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1858 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said City this 4th day of May, 2000.

(SEAL)

Martha Heizer

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1858

Publication Fees: $38.81

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1858--4/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$38.81

ORDINANCE NO. 1858

First published in The Legal Record, Tuesday, April 18, 2000.

ORDINANCE NO. 1858

AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described permanent drainage easement and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: That the following described real estate, previously dedicated as a permanent drainage easement in a document filed with the Johnson County Register of Deeds Office in Book 113, Page 3, should be and is hereby vacated, to wit:

An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as shown on the Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded at the Johnson County Register of Deeds Office in Book 113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:

Commencing at the Southeast corner of Lot 38, Brittany Court replat, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, said corner also being an angle point of said Tract "C," The Woods; thence South 87°45'35" West along the North line of said Tract "C," a distance of 133.58 feet to a point on the centerline of said existing drainage easement, said point also being the True Point of Beginning; thence South 15°13'57" West, along said centerline of existing drainage easement, a distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C". All side lines are to be extended or shortened to terminate on the north and south lines of said Tract "C".

SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing or reconstructing any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney

ORDINANCE NO. 1857

AN ORDINANCE AMENDING ORDINANCE NO. 1855 AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, by Ordinance No. 1855 the Governing Body of the City has heretofore authorized and provided for the issuance of temporary notes of the City in the principal amount of $5,500,000 to provide funds to finance the cost of certain public improvement projects within the City as described therein; and

WHEREAS, the amount necessary to pay and retire certain Prior Notes as provided in Ordinance No. 1855 is incorrect, and it is therefore necessary to amend said Ordinance as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Repeal and Amendment of Section 5 of Ordinance No. 1855. Section 5 of Ordinance No. 1855 is hereby repealed in its entirety and there is hereby inserted in lieu thereof the following new Section 5:

> "Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions."

Section 2. Effect and Construction. This Ordinance amends Ordinance No. 1855 and shall be a part thereof. Except as amended hereby, Ordinance No. 1855 is hereby ratified and confirmed and shall be and remain in full force and effect.

Section 3. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 4. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 17th day of April, 2000.

APPROVED by the Mayor the 17th day of April, 2000.

(S E A L)

Peggy J. Dunn, Mayor

ATTEST:

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORD1857

Publication Fees: $39.30

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1857--4/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$39.30

ORDINANCE NO. 1857

First published in The Legal Record, Tuesday, April 18, 2000.

ORDINANCE NO. 1857

AN ORDINANCE AMENDING ORDINANCE NO. 1855 AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, by Ordinance No. 1855 the Governing Body of the City has heretofore authorized and provided for the issuance of temporary notes of the City in the principal amount of $5,500,000 to provide funds to finance the cost of certain public improvement projects within the City as described therein; and

WHEREAS, the amount necessary to pay and retire certain Prior Notes as provided in Ordinance No. 1855 is incorrect, and it is therefore necessary to amend said Ordinance as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Repeal and Amendment of Section 5 of Ordinance No. 1855. Section 5 of Ordinance No. 1855 is hereby repealed in its entirety and there is hereby inserted in lieu thereof the following new Section 5:

> "Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions."

Section 2. Effect and Construction. This Ordinance amends Ordinance No. 1855 and shall be a part thereof. Except as amended hereby, Ordinance No. 1855 is hereby ratified and confirmed and shall be and remain in full force and effect.

Section 3. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 4. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 17th day of April, 2000.

APPROVED by the Mayor the 17th day of April, 2000.

(S E A L)

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST:

Marcia Heizer

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1856

AN ORDINANCE AMENDING SECTION 4-2 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO PROHIBITED USES; AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 4-2 of the Leawood Development Ordinance, is hereby amended to read as follows:

4-2.1 Buildings in Residentially Zoned Area

No business building shall be erected in a residentially zoned district, nor shall any dwelling be converted to or used for any business purpose or character in a residentially zoned district except as specifically authorized in Section 4-7 Home Occupations.

4-2.2 Detached Structures

No garage, barn, shed, greenhouse, above ground pool (type sold to be placed above ground), outbuilding or any other detached structure, except dog houses, dog runs, dog kennels, children's playground equipment such as swing sets, jungle-gyms, teeter totters, sand boxes and similar types of recreational equipment, shall be built, placed, or constructed in any R-1 (Single Family Residential), RP-1 (Planned Single Family Residential), or RP-2 (Planned Two Family Residential) District. Architecturally attached detached structures shall be allowed only when in the opinion of the Director the definition of "Architecturally Attached" has been satisfied.
The Board of Zoning Appeals may, in its discretion, when deemed advisable, authorize exceptions to this regulation and restriction after conducting a public hearing thereon and due notice thereof by publication in the official city newspaper prior thereto.

4-2.3 Ceasing or Abandonment of Construction

No building, structure or appurtenance shall be permitted or maintained upon which construction has ceased for a period longer than 6 months.

4-2.4 No Damaged Building Left Unrepaired Over Three Months

No building, structure or appurtenance damaged by fire, windstorm, hail, water, tree or any other means shall be permitted to remain in such damaged condition for a period longer than 3 months, except with permission of the Governing Body of the City of Leawood.

4-2.5 No Building Material Stored, Etc.

No building material, inoperable vehicle, construction equipment, machinery, trailer, construction trailer or refuse shall be maintained or kept in the open upon any lot, plot, tract or premises other than during actual construction operations upon said premises or related premises.

4-2.6 Septic Tanks

The use of septic tanks for disposal of sewage from buildings hereafter erected or moved into the City of Leawood is prohibited, except in areas where sewer mains of a public or private sewer system are found to be impractical by the Governing Body after report of the City Engineer. In such cases, use of septic tanks shall be subject to the approval of a permit for the septic tank system by the Governing Body after recommendation of the County Health Department.

4-2.7 Storage of Hazardous Materials

See Uniform Fire Code as adopted by the City of Leawood for restrictions on placement and allowable quantities.

4-2.8 Individually Owned Television Antenna

Not to include satellite dishes.

4-2.9 Use of Temporary Protective Coverings on Buildings

The use of temporary protective coverings, (i.e. tarp, salvage covers, tarpaper) on external portions of buildings, structures or appurtenances shall not be allowed to exceed 30 days. Provided that the property owner or representative has provided a set of plans and / or written strategy for repairing the structure within the initial 30 days of installing the temporary protective covering, then the Building Official may grant an addition 30-60 day extension. The temporary protective covering may not be allowed to exceed 90 days without permission from the Governing Body of the City of Leawood.

Section 2. Existing Section Repealed. That existing Section 4-2 of the Leawood Development Ordinance is hereby repealed. (Prior law: Ord. No. 1674)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of April, 2000.

Approved by the Mayor the 17th day of April, 2000.

(SEAL)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1856

Publication Fees: $38.81

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1856--4/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 19, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$38.81

ORDINANCE NO. 1856

First published in The Legal Record, Tuesday, April 18, 2000.

ORDINANCE NO. 1856

AN ORDINANCE AMENDING SECTION 4-2 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO PROHIBITED USES; AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 4-2 of the Leawood Development Ordinance, is hereby amended to read as follows:

4-2.1 Buildings in Residentially Zoned Area

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No garage, barn, shed, greenhouse, above ground pool (type sold to be placed above ground), outbuilding or any other detached structure, except dog houses, dog runs, dog kennels, children's playground equipment such as swing sets, jungle-gyms, teeter totters, sand boxes and similar types of recreational equipment, shall be built, placed, or constructed in any R-1 (Single Family Residential), RP-1 (Planned Single Family Residential), or RP-2 (Planned Two Family Residential) District. Architecturally attached detached structures shall be allowed only when in the opinion of the Director the definition of "Architecturally Attached" has been satisfied.
The Board of Zoning Appeals may, in its discretion, when deemed advisable, authorize exceptions to this regulation and restriction after conducting a public hearing thereon and due notice thereof by publication in the official city newspaper prior thereto.

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No building, structure or appurtenance shall be permitted or maintained upon which construction has ceased for a period longer than 6 months.

4-2.4 No Damaged Building Left Unrepaired Over Three Months

No building, structure or appurtenance damaged by fire, windstorm, hail, water, tree or any other means shall be permitted to remain in such damaged condition for a period longer than 3 months, except with permission of the Governing Body of the City of Leawood.

4-2.5 No Building Material Stored, Etc.

No building material, inoperable vehicle, construction equipment, machinery, trailer, construction trailer or refuse shall be maintained or kept in the open upon any lot, plot, tract or premises other than during actual construction operations upon said premises or related premises.

4-2.6 Septic Tanks

The use of septic tanks for disposal of sewage from buildings hereafter erected or moved into the City of Leawood is prohibited, except in areas where sewer mains of a public or private sewer system are found to be impractical by the Governing Body after report of the City Engineer. In such cases, use of septic tanks shall be subject to the approval of a permit for the septic tank system by the Governing Body after recommendation of the County Health Department.

4-2.7 Storage of Hazardous Materials

See Uniform Fire Code as adopted by the City of Leawood for restrictions on placement and allowable quantities.

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The use of temporary protective coverings, (i.e. tarp, salvage covers, tarpaper) on external portions of buildings, structures or appurtenances shall not be allowed to exceed 30 days. Provided that the property owner or representative has provided a set of plans and / or written strategy for repairing the structure within the initial 30 days of installing the temporary protective covering, then the Building Official may grant an addition 30-60 day extension. The temporary protective covering may not be allowed to exceed 90 days without permission from the Governing Body of the City of Leawood.

Section 2. Existing Section Repealed. That existing Section 4-2 of the Leawood Development Ordinance is hereby repealed. (Prior law: Ord. No. 1674)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of April, 2000.

Approved by the Mayor the 17th day of April, 2000.

(SEAL) Peggy J. Dunn — Peggy J. Dunn, Mayor

Attest:

Martha Heizer — Martha Heizer, City Clerk

[redacted] Bett — City Attorney

ORDINANCE NO. 1855

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described public improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement and reimprovement of College Boulevard within the City pursuant to K.S.A. 12-685, et seq. and Ordinance No. 1488;

(b) Acquisition, construction and installation of improvements to existing City Parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742;

(c) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505;

(e) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place Subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1489;

(f) Improvement and reimprovement of Lee Boulevard between 103rd Street and Mission Road pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1807;

(g) Improvement and reimprovement of 151st Street between Nall Avenue and Glenwood pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(h) Improvement and reimprovement of Roe Avenue between 137th Street and 138th pursuant to K.S.A. 12-685 et seq. and Resolution No. 1504; and

(i) Reconstruction, remodeling and replacement of the bathhouse at the municipal pool complex in the City Park at 10601 Lee Boulevard pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1735;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued its Temporary Notes dated August 1, 1999, in the principal amount of $3,300,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,400,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become

due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax

upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,600,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax

purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 3rd day of April, 2000.

APPROVED by the Mayor the 3rd day of April, 2000.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORD1855

Publication Fees: $108.77

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1855--4/4/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
ARPIL 5, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$108.77

ORDINANCE NO. 1855

First published in The Legal Record, Tuesday, April 4, 2000.

ORDINANCE NO. 1855

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described public improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement and reimprovement of College Boulevard within the City pursuant to K.S.A. 12-685, et seq. and Ordinance No. 1488;

(b) Acquisition, construction and installation of improvements to existing City Parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742;

(c) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505;

(e) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place Subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1489;

(f) Improvement and reimprovement of Lee Boulevard between 103rd Street and Mission Road pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1807;

(g) Improvement and reimprovement of 151st Street between Nall Avenue and Glenwood pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(h) Improvement and reimprovement of Roe Avenue between 137th Street and 138th pursuant to K.S.A. 12-685 et seq. and Resolution No. 1504; and

(i) Reconstruction, remodeling and replacement of the bathhouse at the municipal pool complex in the City Park at 10601 Lee Boulevard pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1735;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued its Temporary Notes dated August 1, 1999, in the principal amount of $3,300,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,400,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000) (the "Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,600,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax

CONTINUED ON PAGE 7

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, April 4, 2000.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a public hearing on the 1st day of May, at 7:00 p.m. at the City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas.

At said hearing all interested parties will be heard regarding a request for a Permanent Special Use Permit, to allow Goddard School, commercial daycare, within the NP-O, Planned Neighborhood Zoning District, on the following described tract:

Commencing at the Southwest corner of Lot 1, Block 2; Rosehill Pointe, a subdivision in the City of Lenexa, Johnson County, Kansas; thence North 87° 49' 17" East along the South Line of said Lot 1, a distance of 396.22 feet to the TRUE POINT OF BEGINNING; thence continuing North 87° 49' 17" East along the South Line of said Lot 1, a distance of 305.78 feet to the Southeast Corner thereof; thence North 02°11'33" West along the East Line of said Lot 1, a distance of 123.21 feet to a point; thence South 87°49'17" West and parallel to the South Line of said Lot 1, a distance of 140.26 feet to a point; thence North 02°05'22" West, a distance of 50.00 feet to a point; thence South 87°47'35" West, a distance of 165.66 feet to a point; thence South 02°12'25" East, a distance of 173.13 feet to the True Point of Beginning., containing 45,957 s.f. or 1.055 acres more or less.

All persons interested in said premises and all persons owning property in said neighborhood who desire to be heard, either for or against the above request are invited to appear at the time and place above-mentioned.

This request was filed by Jim Long, agent for Sunset Plaza L.P. and Tutera Group, Owners of Record.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

DO:as
SU 00-01 GODDARD SCHOOL

Publication Date: April 4, 2000
P.C. Meeting Date: May 1, 2000

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, April 4, 2000.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a public hearing on the **1st day of May, 2000, at 7:00 p.m.** at the City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas.

At said hearing all interested parties will be heard regarding a proposal to rezone property located at Cherry Lane, north of 95th Street, in the Ag, Agricultural Zoning District to the R-1, Residential Single Family Zoning District, on the following described tracts:

Part of the SW 1/4 of Section 36, T12S, R23E, more particularly described as follows:

Commencing at the SW corner of the SW 1/4 of Section 36, T12S, R23E; thence S89°54'10"E along the south line of the SW 1/4 of said Section 36, 1202.93 feet to the TRUE POINT OF BEGINNING; thence N 00°14'20" W, 671.40 feet; thence N 89°54'17" W, 194.65 feet; thence N 00°15'46" W, 629.34 feet; thence N 89°44'31" E, 643.65 feet; thence S 00°15'00" E, 1304.73 feet; thence N 89°54'10" W, 449.00 feet to the TRUE POINT OF BEGINNING, containing 16.247 acres, excluding that part thereof dedicated for streets.

All persons interested in said premises and all persons owning property in said neighborhood who desire to be heard, either for or against the above request are invited to appear at the time and place above-mentioned.

This request was filed by Don Ballard, agent for Parkwoods Investment Inc, Owner of Record.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

DO:aes

RZ 00-06 Woodland Lakes, 2nd Plat revised
Publication Date: April 4, 2000
P.C. Meeting Date: May 1, 2000

NOTICE OF HEARING

First published in The Legal Record, Tuesday, April 4, 2000.

NOTICE OF HEARING

The City of Leawood Plan Commission will hold a public hearing on Tuesday, April 25, 2000, at 6:00 p.m. at the Leawood City Hall, Council Chambers, 4800 Town Center Drive, Leawood, Kansas, to consider a request for an amendment to the Leawood Development Ordinance Section 4-3 Special Use Provisions.

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at (913) 339-9112 no later than 48 hours prior to the scheduled commencement of the meeting.

Donald C. Brain, Jr. Chairperson
Leawood Plan Commission

NOTICE OF PUBLIC HEARING

First published in The Legal Record, Tuesday, April 4, 2000.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Lenexa Planning Commission will hold a public hearing on the **1st day of May, 2000, at 7:00 p.m.** at the City Hall, 12350 West 87th Street Parkway, Lenexa, Kansas.

At said hearing all interested parties will be heard regarding a proposal to rezone property located at the proposed 116th Street, east of Renner Road, in the Ag, Agricultural Zoning District, to the BP-1, Planned Business Park and BP-2, Planned Manufacturing Zoning Districts, on the following described tracts:

All of the Northwest Quarter of the Southwest Quarter and all of the Northeast Quarter of the Southwest Quarter, all being in Section 17, Township 13, Range 24, in Johnson County, Kansas, containing 80.24 acres, more or less.

All persons interested in said premises and all persons owning property in said neighborhood who desire to be heard, either for or against the above request are invited to appear at the time and place above-mentioned.

This request was filed by Curtis Holland, agent for 119th & I-35 L.L.C., Owner of Record.

LENEXA PLANNING COMMISSION
Don Oppliger, Chairman

DO:aes

RZ 00-04 Liberty Property Trust I
Publication Date: April 4, 2000
P.C. Meeting Date: May 1, 2000

NOTICE OF HEARING

First published in The Legal Record, Tuesday, April 4, 2000.

NOTICE OF HEARING

The City of Leawood Plan Commission will hold a public hearing on Tuesday, April 25, 2000, at 6:00 p.m. at the Leawood City Hall, Council Chambers, 4800 Town Center Drive, Leawood, Kansas, to consider a request for rezoning from AG, agriculture to RP-4, Planned Cluster Residential, preliminary plat and preliminary plan for Summer Tree located at approximately 151st and Mission Road, legally known as (see attached legal description), Leawood, Kansas.

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at (913) 339-9112 no later than 48 hours prior to the scheduled commencement of this meeting.

Donald C. Brain, Jr. Chairperson
Leawood Plan Commission

LEGAL DESCRIPTION:

All that part of the Northeast Quarter of Section 9, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 02°04'56" East, along the East line of said Northeast Quarter, a distance of 577.00 feet; thence South 73°23'35" West, a distance of 136.55 feet; thence North 76°31'27" West, a distance of 34.43 feet; thence South 75°11'20" West, a distance of 95.14 feet; thence South 79°30'52" West, a distance of 118.80 feet; thence South 73°00'10" West, a distance of 137.22 feet; thence South 31°45'16" West, a distance of 48.08 feet; thence South 73°23'35" West, a distance of 152.25 feet; thence South 67°42'12" West, a distance of 160.81 feet; thence South 60°54'54" West, a distance of 20.14 feet; thence South 57°23'41" West, a distance of 76.96 feet; thence South 56°13'39" West, a distance of 165.11 feet; thence North 28°56'01" West, a distance of 449.67 feet; thence North 20°34'13" East, a distance of 115.05 feet; thence North 59°15'05" East, a distance of 11.48 feet; thence North 83°52'30" East, a distance of 55.06 feet; thence North 10°03'47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and Northeasterly, along a curve to the right, having a radius of 225.00 feet; and a central angle of 45°05'47", a distance of 177.09 feet; thence North 12°02'19" West, along an existing fence line, a distance of 236.50 feet, to a point on the North line of said Northeast Quarter; thence North 87°30'15" East, along the North line of said Northeast Quarter, a distance of 1152.08 feet, to the Point of Beginning, except any part thereof in streets or roads.

The above described tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2645 acres, more or less (excludes 151st Street and Mission Road right-of-way).

***

No one who is enjoying life is a failure.
—William Feather

***

CONTINUED FROM PAGE 6

purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 3rd day of April, 2000.

APPROVED by the Mayor the 3rd day of April, 2000.

(S E A L)

Peggy J. Dunn, Mayor

ATTEST:

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1854

AN ORDINANCE ACCEPTING A PERMANENT SIDEWALK EASEMENT FOR A SIDEWALK AS SHOWN ON THE PLANS FOR HORIZON NATIONAL BANK AT RANCHMART SHOPPING CENTER, 95TH AND MISSION ROAD.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent sidewalk easement more particularly designated and described, to wit:

From Ranch Mart, Inc.: Part of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas, being more particularly described as follows: Commencing at the S.W. corner of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas; thence E. along the S. line of the said S.W. 1/4, 1108.1 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of said S.W. 1/4, 40 feet to the true point of beginning; thence W. along a line parallel to and 40 feet N. of the S. line of the said S.W. 1/4, 240.20 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to a point; thence E. along a line parallel to and 43.25 feet N. of the S. line of the said S.W. 1/4, 240.2 feet to a point; thence S. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to the true point of beginning.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1854

Publication Fees: $18.32

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1854--3/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 22, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

ORDINANCE NO. 1854

First published in The Legal Record, Tuesday, March 21, 2000.

ORDINANCE NO. 1854

AN ORDINANCE ACCEPTING A PERMANENT SIDEWALK EASEMENT FOR A SIDEWALK AS SHOWN ON THE PLANS FOR HORIZON NATIONAL BANK AT RANCHMART SHOPPING CENTER, 95TH AND MISSION ROAD.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent sidewalk easement more particularly designated and described, to wit:

From Ranch Mart, Inc.: Part of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas, being more particularly described as follows: Commencing at the S.W. corner of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas; thence E. along the S. line of the said S.W. 1/4, 1108.1 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of said S.W. 1/4, 40 feet to the true point of beginning; thence W. along a line parallel to and 40 feet N. of the S. line of the said S.W. 1/4, 240.20 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to a point; thence E. along a line parallel to and 43.25 feet N. of the S. line of the said S.W. 1/4, 240.2 feet to a point; thence S. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to the true point of beginning.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Peggy J. Dunn
Peggy J. Dunn Mayor

Attest:

Martha Heizer
Martha Heizer City Clerk

APPROVED FOR FORM:
Patricia A. Bennett City Attorney

$18.32

ORDINANCE NO. 1853

AN ORDINANCE ACCEPTING 2 STORM SEWER EASEMENTS FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR HIGHLANDS RANCH 2ND PLAT.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts 2 storm sewer easements more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the southeast corner of the Northwest Quarter (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of the Northwest Quarter (1/4) of said Section 34, a distance of 103.06 feet to the Point of Beginning; thence South 72 degrees 17 minutes 13 seconds West a distance of 21.76 feet; thence South 26 degrees 30 minutes 40 seconds West a distance of 57.61 feet; thence North 63 degrees 29 minutes 20 seconds West a distance of 35.00 feet; thence North 26 degrees 30 minutes 40 seconds East a distance of 72.39 feet; thence North 72 degrees 17 minutes 13 seconds East a distance of 47.74 feet to a point on said East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said East line, a distance of 36.75 feet to the Point of Beginning. Containing 0.08 acres, more or less.

AND

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the Southeast corner of the Northwest (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of said Northwest Quarter (1/4), a distance of 736.35 feet to the Point of Beginning; thence South 11 degrees 05 minutes 44 seconds West a distance of 25.60 feet; thence North 78 degrees 54 minutes 16 seconds West a distance of 35.00 feet; thence North 11 degrees 05 minutes 44 seconds East a distance of 42.72 feet; thence North 28 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence South 61 degrees 15 minutes 29 seconds East a distance of 12.02 feet to a point on the East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said east line, a distance of 55.20 feet to the Point of Beginning. Containing 0.05 acres, more or less.

Section 2. That copies of said easements are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

ORD1853

Publication Fees: $31.37

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1853--3/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 22, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

ORDINANCE NO. 1853

First published in The Legal Record, Tuesday, March 21, 2000.

ORDINANCE NO. 1853

AN ORDINANCE ACCEPTING 2 STORM SEWER EASEMENTS FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR HIGHLANDS RANCH 2ND PLAT.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts 2 storm sewer easements more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the southeast corner of the Northwest Quarter (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of the Northwest Quarter (1/4) of said Section 34, a distance of 103.06 feet to the Point of Beginning; thence South 72 degrees 17 minutes 13 seconds West a distance of 21.76 feet; thence South 26 degrees 30 minutes 40 seconds West a distance of 57.61 feet; thence North 63 degrees 29 minutes 20 seconds West a distance of 35.00 feet; thence North 26 degrees 30 minutes 40 seconds East a distance of 72.39 feet; thence North 72 degrees 17 minutes 13 seconds East a distance of 47.74 feet to a point on said East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said East line, a distance of 36.75 feet to the Point of Beginning. Containing 0.08 acres, more or less.

AND

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the Southeast corner of the Northwest (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of said Northwest Quarter (1/4), a distance of 736.35 feet to the Point of Beginning; thence South 11 degrees 05 minutes 44 seconds West a distance of 25.60 feet; thence North 78 degrees 54 minutes 16 seconds West a distance of 35.00 feet; thence North 11 degrees 05 minutes 44 seconds East a distance of 42.72 feet; thence North 28 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence South 61 degrees 15 minutes 29 seconds East a distance of 12.02 feet to a point on the East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said east line, a distance of 55.20 feet to the Point of Beginning. Containing 0.05 acres, more or less.

Section 2. That copies of said easements are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

$31.37

ORDINANCE NO. 1852

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT AND 4 DEEDS OF DEDICATION FOR IMPROVEMENTS TO 151ST STREET FROM METCALF TO NALL AVENUE.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainage easement and 4 deeds of dedication more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: (Easement) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 87° 18'50" E along the South line of said Southwest Quarter, a distance of 109.110 meters (357.97 feet); thence N 02° 41'10" W, a distance of 18.288 meters (60.00 feet) to the true point of beginning; thence N 02° 41'10" W, a distance of 10.712 meters (35.14 feet); thence N 87° 18'50" E, a distance of 6.000 meters (19.68 feet); thence S 02° 41'10" E, a distance of 10.712 meters (35.14 feet); thence S 87° 18'50" W, a distance of 6.000 meters (19.68 feet) to the true point of beginning; said parcel of land containing 64.3 square meters (692 square feet), more or less.

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239.209 meters (784.80 feet); thence N 02° 41'10" W, a distance of 18.288 meters (60.00 feet) to the North line of said Northwest Quarter; thence S 87° 18'50" W along said North line of the Northwest Quarter, a distance of 268.110 meters (879.62 feet) to the true point of beginning, EXCEPT that part previously dedicated for street purposes, said parcel of land containing 2,224.1 square meters (23,940 square feet), more or less.

Section 2. That copies of said easement and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(SEAL)

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

ORD1582

Publication Fees: $50.60

The Legal Record
Lewis Legal News, Inc.
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(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

ORDINANCE NO. 1852--3/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 22, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$50.60

ORDINANCE NO. 1852

First published in The Legal Record, Tuesday, March 21, 2000.

ORDINANCE NO. 1852

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT AND 4 DEEDS OF DEDICATION FOR IMPROVEMENTS TO 151ST STREET FROM METCALF TO NALL AVENUE.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainage easement and 4 deeds of dedication more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: (Easement) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 87° 18'50" E along the South line of said Southwest Quarter, a distance of 109.110 meters (357.97 feet); thence N 02° 41'10" W, a distance of 18.288 meters (60.00 feet) to the true point of beginning; thence N 02° 41'10" W, a distance of 10.712 meters (35.14 feet); thence N 87° 18'50" E, a distance of 6.000 meters (19.68 feet); thence S 02° 41'10" E, a distance of 10.712 meters (35.14 feet); thence S 87° 18'50" W, a distance of 6.000 meters (19.68 feet) to the true point of beginning; said parcel of land containing 64.3 square meters (692 square feet), more or less.

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Section 2. That copies of said easement and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Peggy J. Dunn — Mayor

Attest:

Martha Heizer — City Clerk

APPROVED FOR FORM:

Patricia A. Bennett — City Attorney

RIGHT-OF-WAY ORDINANCE NO. 1851

AN ORDINANCE GRANTING TO AXON TELECOM, L.L.C. THE RIGHT, PRIVILEGE OR FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN CONDUIT FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, Axon Telecom, L.L.C., desires to conduct, operate and maintain conduit facilities in the City right-of-way in order to lease or sell the use of such facilities to duly franchised entities for telecommunication, cable, and other similar services; and

WHEREAS, the City of Leawood, Kansas, a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant the right, privilege or franchise to construct, operate and maintain conduit facilities in the City right-of-way in accordance to K.S.A. 12-2001 et. al; and

WHEREAS, Axon Telecom, L.L.C. does not intend to install, operate or own its own cable, including but not limited to dark fiber, and will not do so without first coming back to the City for a franchise ordinance to do the same; and

WHEREAS, in addition to the terms of this ordinance, Axon Telecom, L.L.C. will meet the requirements of the City's ordinance regarding the Use and Excavation of the Public Right-of-Way; and

WHEREAS, pursuant to K.S.A. 12-2001, the Governing Body of the City did order publication of a notice of a hearing to be held on 3/6/00 to afford the public-at-large, an opportunity to comment on the proposed ordinance, a copy of which was on file in the office of the City Clerk, and such notice was published in an official City newspaper on 2/29/2000 ;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

1. **Definitions.** For the purpose of this ordinance, the following words and phrases and their derivations shall have the following meaning:
   "Axon Telecom" means Axon Telecom, L.L.C., its duly authorized successors, transferees, or assigns.
   "Cable" includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.
   "City" means the City of Leawood, Kansas, a municipal corporation, and any duly authorized representative.
   "Facilities" means lines, pipes, wires, cables, conduits, ducts, innerducts, culverts, manholes, vaults, pedestals, boxes, appliances, gates, meters, appurtenances, or other equipment used by Axon Telecom for the purposes of conducting its business operations as authorized herein.
   "Fee" means the fee imposed by the City on Axon Telecom solely because of its status in accordance to K.S.A. 12-2001. It shall not include: (1) any tax, fee, or assessment of general applicability including any which are imposed on Axon Telecom; (2) requirements or charges incidental to the awarding or enforcement of this ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (3) any permit fee or other fee imposed under any valid ordinance regulating the right-of-way, or (4) any other fee imposed by federal, state, or local law.
   "Person" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
   "Right-of-way" means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.
   "Right-of-way ordinance" means this ordinance passed to grant the right, privilege or franchise to construct, operate and maintain conduit facilities within the right-of-way. This ordinance shall operate as an agreement or contract between the City and Axon Telecom and shall be subject to the laws of the State of Kansas.

"Utility Easement" means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of utilities.

2. **Grant.** Axon Telecom is hereby granted the right, privilege or franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements in accordance with the plans submitted and approved by the Public Works Director for the purposes of supplying innerducts by lease or sale to other duly franchised entities on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, Axon Telecom is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. This ordinance does not grant Axon Telecom the right, privilege or franchise to provide telecommunications services (as defined by 47 U.S.C.§153), cable service (as defined by 47 U.S.C. § 522), open video system service (as defined by 47 U.S.C. § 573) or any other service, or to install its own cable; provided that this restriction shall not preclude Axon Telecom from installing the facilities or cable of other duly franchised or otherwise authorized entities.

3. **Use of Public Right-of-Way and Utility Easements.** Axon Telecom's facilities shall be located in the right-of-way and utility easements in accordance with the plans currently proposed and approved by the Public Works Director. Modifications to such plans and/or any future requests for additional placement shall only be allowed as approved and authorized by the Public Works Director. Placement, modification, replacements, maintenance and repairs to Axon Telecom's facilities shall be conducted in compliance with all applicable laws, statutes, ordinances and permit requirements. Axon Telecom will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, Axon Telecom shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, Axon Telecom shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers, including, but not limited to the City's ordinance regarding the Use and Excavation of the Public Right-of-Way.

4. **Maintenance of Facilities.** Axon Telecom shall keep its facilities in good repair and working order and shall maintain its facilities in accordance all applicable law, statute and ordinance; provided that any related expense may be shared in whole or in part with entities leasing or purchasing the use of Axon Telecom's facilities. In the event Axon Telecom requests to transfer or relinquish its right, privilege or franchise herein granted, Axon shall provide the City with evidence that such maintenance responsibility has been appropriately assumed by another entity or entities.

5. **Fee.** Axon Telecom shall pay an initial one-time administrative fee of $1,000 for the right, privilege or franchise hereunder. Further, Axon Telecom shall pay the City one (1%) percent of all gross revenues collected for any and all leases and sales of its innerducts and other facilities in the right-of-way and utility easements within the City of Leawood. Such payments shall be made on a semiannual basis for any lease, and within thirty (30) days of the execution of any sale. All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City. Axon Telecom shall pay interest at an annual rate of ten (10%) percent for each month or fraction thereof on any late payment of the charge provided for in this ordinance.

6. **Term.** This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, this ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred and eighty (180) days before the termination of the then current term.

7. **Renegotiation of Ordinance Provisions.** If the City has a good faith belief that Axon Telecom is offering telecommunications, cable, OVS or any other service within the City beyond those services contemplated and granted by this ordinance, the City may seek renegotiation of this ordinance or require a separate franchise ordinance for such services. Axon Telecom agrees to negotiate with the City in good faith in a timely manner, and to pay for any prior unauthorized use in accordance with the terms of the amended or new ordinance. The purpose of this provision is to allow the City to ensure that Axon Telecom is paying a fee for all services for which a franchise fee is appropriate.

8. **Description of Service.** In the event Axon Telecom offers new services other than the lease or sale of its innerducts and the installation of other duly franchised entities' cable or other facilities therein, Axon Telecom shall immediately notify the City.

9. **Axon Telecom's Information.** Axon Telecom shall, at its own expense, annually submit to the City a summary of the previous year's development of its facilities, including but not limited to, the location of facilities during the year, and Axon Telecom's plan of development of facilities for the next year – Note: in lieu of this requirement, Axon Telecom's agent may meet in person with the City's Public Works Director to discuss these issues.

10. **Use of Facilities by Other Entities.**

    a. Axon Telecom may sell, transfer or lease its innerducts and related facilities to duly franchised entities; provided that such transaction shall not constitute authorization by the City for such entities to operate within the City, or a transfer in whole or part of the right, privilege or franchise herein granted. Axon Telecom shall timely notify the City of the identity of all entities that have leased or purchased in whole or in part the use of Axon Telecom's facilities.

    b. Axon Telecom shall not interfere with any City right-of-way or franchise requirements regarding any entity leasing in whole or in part the use of Axon Telecom's facilities. Further, Axon Telecom shall not interfere with or oppose any line charge fee imposed upon such entity.

    c. Axon Telecom understands that the City may request service providers to reasonably utilize any available space or capacity within Axon Telecom's facilities. In such event Axon Telecom will charge a fairly priced rate and will make a reasonable attempt to negotiate an appropriate agreement with any such service provider.

11. **Transfer of Right, Privilege or Franchise.** Pursuant to permission of the City, which shall not be unreasonably withheld, Axon Telecom shall have the right to assign as a whole the right, privilege or franchise herein granted to any person who, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations under this ordinance or any applicable governmental requirement. Notice of Axon Telecom's intent to assign its right, privilege or franchise granted by this ordinance shall be in writing. Upon completion of the assignment, an authenticated copy thereof shall be filed with the city clerk. The right, privilege or franchise granted by this ordinance shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the right, privilege or franchise granted herein by the City or Axon Telecom's facilities not conforming with the requirements of this section shall be null and void. This section is not intended to apply to or prevent Axon Telecom's leasing or sale of its innerducts to other entities, nor shall the same be considered a transfer of any right, privilege or franchise granted herein.

12. **Notification Procedure.** Any required or permitted notice under this ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon Axon Telecom shall be delivered by first class United States mail or by personal delivery to: **Att: Legal Department, Axon Telecom, L.L.C., 450 Pryor Blvd., P.O. Box 409, Sturgis, KY 42459.**

13. **Indemnification.** Axon Telecom shall fully indemnify, release, defend and hold harmless the City, and agents of the City when acting in their capacity as municipal officials, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by negligent acts or omissions of Axon Telecom in the performance of the permitted work. The City agrees to timely notify Axon Telecom of such claim, demand, suit, proceeding, and/or action by providing written notice to Axon Telecom. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Axon Telecom from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

14. **Liability Insurance Requirement.** Axon Telecom shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Axon Telecom, or alleged to so have been caused or occurred. If Axon Telecom is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

15. **Performance and Maintenance Bond Requirement.** Axon Telecom shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this ordinance plus one additional year, conditioned upon Axon Telecom's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

16. **Reservation of Rights.** In addition to any rights specifically reserved to the City by this ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of this ordinance, except those required by federal or state law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will impose an undue hardship on Axon Telecom or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

17. **Forfeiture of Right, Privilege or Franchise.** In case of the failure of Axon Telecom to comply with any of the provisions of this ordinance, or if Axon Telecom should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Axon Telecom shall forfeit any right, privilege or franchise granted by this ordinance and any such right, privilege or franchise shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

    a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Axon Telecom

shall take to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions created by this ordinance have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. If Axon Telecom fails to take corrective action within the thirty (30) day period set forth above, nothing herein shall preclude the City from maintaining an action against Axon Telecom to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of this ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this ordinance. If at the end of such period the City deems that the conditions have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated.

c. If within thirty (30) days after the effective date of an ordinance to terminate this ordinance, in accordance with the provisions herein, Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty-day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason of the violation of the terms, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and/or to abate nuisances maintained in violation thereof.

20. Revocation of This Ordinance. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this ordinance and all right, privilege or franchise of Axon Telecom as a result of and in response to any of the following events or reasons:

a. Any provision of this ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this ordinance as to cause the same to become null and void; or

b. Axon Telecom commits an act of fraud or deceit against the City in obtaining the grant of this ordinance, or upon being granted Axon Telecom commits such an act against the City.

To revoke this ordinance in accordance with the provisions of this section, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. Prior to the enactment of such ordinance, Axon Telecom shall be provided with timely written notice by certified mail, and Axon Telecom shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate this ordinance Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not this ordinance was appropriately terminated in accordance to the provisions of this section and is subject to

cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by the reason addressed by this section, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

21. Miscellaneous Provisions.

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain Axon Telecom's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other rights, privileges or franchises to other persons. However, no such additional grant shall in any way affect the rights or obligations of Axon Telecom.

b. Exclusive Benefit of Axon Telecom. The right, privilege or franchise granted to Axon Telecom by this ordinance shall be for the sole use of Axon Telecom to provide conduit services as authorized herein. These rights are for the exclusive benefit of Axon Telecom, except where otherwise provided herein, or when authorized by the City.

c. Axon Telecom is Without Remedy Against the City. Axon Telecom shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this ordinance, or for the failure of the City to have the authority to grant, all, or any part, of this ordinance granted. Second, Axon Telecom expressly acknowledges that it accepted this ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the right, privilege or franchise conferred upon Axon Telecom. Third, Axon Telecom acknowledges by its acceptance of this ordinance that it has not been induced to agree to the terms of this ordinance upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this ordinance not expressed herein. Finally, Axon Telecom acknowledges by the acceptance of this ordinance that it has carefully read the provisions, terms, and conditions of this ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this ordinance to the contrary, the construction, operation and maintenance of Axon Telecom's facilities by Axon Telecom or its agent shall be in accordance with all laws and regulations of the United States the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, Axon Telecom shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Axon Telecom's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Axon Telecom shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Axon Telecom's failure to comply with any law or regulation governing the operation of said facilities may result in a forfeiture of the granting of the right, privilege or franchise created by this ordinance.

e. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of the agreement created by this ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

f. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Axon Telecom's or the City's control.

g. Severability. Any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of

competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22. **Effectiveness.** This ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three (3) regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty (60) days from the date of final passage by the governing body and after publication in the official City newspaper for two consecutive weeks following final passage, unless a proper protest is filed, or Axon Telecom fails to provide written acceptance within the sixty (60) day period.

First Reading: 1/17/2000, Second Reading: 2/7/2000, Third Reading: 3/6/2000,

Passed by the Council the 6 day of March, 2000.

Approved by the Mayor the 6 day of March, 2000.

(SEAL)

ATTEST:

Martha Heizer, City Clerk

Peggy J. Dunn, Mayor

APPROVED AS TO FORM:

Lisa R. Wetzler, Asst. City Attorney

CITY OF LEAWOOD, KANSAS

NOTICE OF HEARING

NOTICE OF HEARING ON PROPOSED FRANCHISE ORDINANCE FOR AXON TELECOM, L.L.C.

Notice is hereby given that the Governing Body of the City of Leawood, Kansas, will meet on Monday, the 6th day of March, 2000, at seven-thirty (7:30) P.M., or shortly thereafter, at the Leawood City Hall Council Chambers, 4800 Town Center Drive, for the purpose of holding a public hearing as provided by K.S.A. 12-2001 to consider the proposed franchise ordinance regarding the operation of a system network by Axon Telecom, L.L.C.

Written or oral objections will be considered at the meeting. All persons desiring to be heard with reference to the proposed franchise ordinance shall be heard at this hearing.

Martha Heizer, City Clerk
City of Leawood

The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

00129972

Publication Fees: $9.22

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

NOTICE OF HEARING, PROPOSED FRANCHISE ORDINANCE--2/29/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 1, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

NOTICE OF HEARING

First published in The Legal Record, Tuesday, February 29, 2000.

CITY OF LEAWOOD, KANSAS

NOTICE OF HEARING

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Martha Heizer, City Clerk
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$9.22

ORD1851

Publication Fees: $229.51

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STATE OF KANSAS, JOHNSON COUNTY, SS;
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That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 2 consecutive week(s), as follows:

RIGHT-OF-WAY ORDINANCE NO.
1851--3/7/00 & 3/14/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 15, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

My appointment expires: August 21, 2003.

$229.51

RIGHT-OF-WAY ORDINANCE NO. 1851

First published in The Legal Record, Tuesday, March 7, 2000.

RIGHT-OF-WAY ORDINANCE NO. 1851

AN ORDINANCE GRANTING TO AXON TELECOM, L.L.C. THE RIGHT, PRIVILEGE OR FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN CONDUIT FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, Axon Telecom, L.L.C., desires to conduct, operate and maintain conduit facilities in the City right-of-way in order to lease or sell the use of such facilities to duly franchised entities for telecommunication, cable, and other similar services; and

WHEREAS, the City of Leawood, Kansas, a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant the right, privilege or franchise to construct, operate and maintain conduit facilities in the City right-of-way in accordance to K.S.A. 12-2001 et. al; and

WHEREAS, Axon Telecom, L.L.C. does not intend to install, operate or own its own cable, including but not limited to dark fiber, and will not do so without first coming back to the City for a franchise ordinance to do the same; and

WHEREAS, in addition to the terms of this ordinance, Axon Telecom, L.L.C. will meet the requirements of the City's ordinance regarding the Use and Excavation of the Public Right-of-Way; and

WHEREAS, pursuant to K.S.A. 12-2001, the Governing Body of the City did order publication of a notice of a hearing to be held on 3/6/00 to afford the public-at-large, an opportunity to comment on the proposed ordinance, a copy of which was on file in the office of the City Clerk, and such notice was published in an official City newspaper on 2/29/2000 ;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

1. **Definitions.** For the purpose of this ordinance, the following words and phrases and their derivations shall have the following meaning:
"Axon Telecom" means Axon Telecom, L.L.C., its duly authorized successors, transferees, or assigns.
"Cable" includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.
"City" means the City of Leawood, Kansas, a municipal corporation, and any duly authorized representative.
"Facilities" means lines, pipes, wires, cables, conduits, ducts, innerducts, culverts, manholes, vaults, pedestals, boxes, appliances, gates, meters, appurtenances, or other equipment used by Axon Telecom for the purposes of conducting its business operations as authorized herein.
"Fee" means the fee imposed by the City on Axon Telecom solely because of its status in accordance to K.S.A. 12-2001. It shall not include: (1) any tax, fee, or assessment of general applicability including any which are imposed on Axon Telecom; (2) requirements or charges incidental to the awarding or enforcement of this ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (3) any permit fee or other fee imposed under any valid ordinance regulating the right-of-way, or (4) any other fee imposed by federal, state, or local law.
"Person" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
"Right-of-way" means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.
"Right-of-way ordinance" means this ordinance passed to grant the right, privilege or franchise to construct, operate and maintain conduit facilities within the right-of-way. This ordinance shall operate as an agreement or contract between the City and Axon Telecom and shall be subject to the laws of the State of Kansas.
"Utility Easement" means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of utilities.

Grant. Axon Telecom is hereby granted the right, privilege or franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements in accordance with the plans submitted and approved by the Public Works Director for the purposes of supplying innerducts by lease or sale to other duly franchised entities on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, Axon Telecom is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. This ordinance does not grant Axon Telecom the right, privilege or franchise to provide telecommunications services (as defined by 47 U.S.C.§153), cable services (as defined by 47 U.S.C. § 522), open video system service (as defined by 47 U.S.C. § 573) or any other service, or to install its own cable; provided that this restriction shall not preclude Axon Telecom from installing the facilities or cable of other duly franchised or otherwise authorized entities.

3. **Use of Public Right-of-Way and Utility Easements.** Axon Telecom's facilities shall be located in the right-of-way and utility easements in accordance with the plans currently proposed and approved by the Public Works Director. Modifications to such plans and/or any future requests for additional placement shall only be allowed as approved and authorized by the Public Works Director. Placement, modification, replacements, maintenance and repairs to Axon Telecom's facilities shall be conducted in compliance with all applicable laws, statutes, ordinances and permit requirements. Axon Telecom will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, Axon Telecom shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, Axon Telecom shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers, including, but not limited to the City's ordinance regarding the Use and Excavation of the Public Right-of-Way.

4. **Maintenance of Facilities.** Axon Telecom shall keep its facilities in good repair and working order and shall maintain its facilities in accordance all applicable law, statute and ordinance; provided that any related expense may be shared in whole or in part with entities leasing or purchasing the use of Axon Telecom's facilities. In the event Axon Telecom requests to transfer or relinquish its right, privilege or franchise herein granted, Axon shall provide the City with evidence that such maintenance responsibility has been appropriately assumed by another entity or entities.

5. **Fee.** Axon Telecom shall pay an initial one-time administrative fee of $1,000 for the right, privilege or franchise hereunder. Further, Axon Telecom shall pay the City one (1%) percent of all gross revenues collected for any and all leases and sales of its innerducts and other facilities in the right-of-way and utility easements within the City of Leawood. Such payments shall be made on a semiannual basis for any lease, and within thirty (30) days of the execution of any sale. All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City. Axon Telecom shall pay interest at an annual rate of ten (10%) percent for each month or fraction thereof on any late payment of the charge provided for in this ordinance.

6. **Term.** This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, this ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred and eighty (180) days before the termination of the then current term.

7. **Renegotiation of Ordinance Provisions.** If the City has a good faith belief that Axon Telecom is offering telecommunications, cable, OVS or any other service within the City beyond those services contemplated and granted by this ordinance, the City may seek renegotiation of this ordinance or require a separate franchise ordinance for such services. Axon Telecom agrees to negotiate with the City in good faith in a timely manner, and to pay for any prior unauthorized use in accordance with the terms of the amended or new ordinance. The purpose of this provision is to allow the City to ensure that Axon Telecom is paying a fee for all services for which a franchise fee is appropriate.

8. **Description of Service.** In the event Axon Telecom offers new services other than the lease or sale of its innerducts and the installation of other duly franchised entities' cable or other facilities therein, Axon Telecom shall immediately notify the City.

9. **Axon Telecom's Information.** Axon Telecom shall, at its own expense, annually submit to the City a summary of the previous year's development of its facilities, including but not limited to, the location of facilities during the year, and Axon Telecom's plan of development of facilities for the next year – Note: in lieu of this requirement, Axon Telecom's agent may meet in person with the City's Public Works Director to discuss these issues.

10. **Use of Facilities by Other Entities.**

    a. Axon Telecom may sell, transfer or lease its innerducts and related facilities to duly franchised entities; provided that such transaction shall not constitute authorization by the City for such entities to operate within the City, or a transfer in whole or part of the right, privilege or franchise herein granted. Axon Telecom shall timely notify the City of the identity of all entities that have leased or purchased in whole or in part the use of Axon Telecom's facilities.

    b. Axon Telecom shall not interfere with any City right-of-way or franchise requirements regarding any entity leasing in whole or in part the use of Axon Telecom's facilities. Further, Axon Telecom shall not interfere with or oppose any line charge fee imposed upon such entity.

    c. Axon Telecom understands that the City may request service providers to reasonably utilize any available space or capacity within Axon Telecom's facilities. In such event Axon Telecom will charge a fairly priced rate and will make a reasonable attempt to negotiate an appropriate agreement with any such service provider.

11. **Transfer of Right, Privilege or Franchise.** Pursuant to permission of the City, which shall not be unreasonably withheld, Axon Telecom shall have the right to assign as a whole the right, privilege or franchise herein granted to any person who, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations under this ordinance or any applicable governmental requirement. Notice of Axon Telecom's intent to assign its right, privilege or franchise granted by this ordinance shall be in writing. Upon completion of the assignment, an authenticated copy thereof shall be filed with the city clerk. The right, privilege or franchise granted by this ordinance shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the right, privilege or franchise granted herein by the City or Axon Telecom's facilities not conforming with the requirements of this section shall be null and void. This section is not intended to apply to or prevent Axon Telecom's leasing or sale of its innerducts to other entities, nor shall the same be considered a transfer of any right, privilege or franchise granted herein.

12. **Notification Procedure.** Any required or permitted notice under this ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon Axon Telecom shall be delivered by first class United States mail or by personal delivery to: Attn: Legal Department, Axon Telecom, L.L.C., 450 Pryor Blvd., P.O. Box 409, Sturgis, KY 42459.

13. **Indemnification.** Axon Telecom shall fully indemnify, release, defend and hold harmless the City, and agents of the City when acting in their capacity as municipal officials, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by negligent acts or omissions of Axon Telecom in the performance of the permitted work. The City agrees to timely notify Axon Telecom of such claim, demand, suit, proceeding, and/or action by providing written notice to Axon Telecom. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Axon Telecom from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

14. **Liability Insurance Requirement.** Axon Telecom shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Axon Telecom, or alleged to so have been caused or occurred. If Axon Telecom is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

15. **Performance and Maintenance Bond Requirement.** Axon Telecom shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this ordinance plus one additional year, conditioned upon Axon Telecom's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

16. **Reservation of Rights.** In addition to any rights specifically reserved to the City by this ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of this ordinance, except those required by federal or state law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will impose an undue hardship on Axon Telecom or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

17. **Forfeiture of Right, Privilege or Franchise.** In case of the failure of Axon Telecom to comply with any of the provisions of this ordinance, or if Axon Telecom should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Axon Telecom shall forfeit any right, privilege or franchise granted by this ordinance and any such right, privilege or franchise shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

    a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Axon Telecom

shall take to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions created by this ordinance have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. If Axon Telecom fails to take corrective action within the thirty (30) day period set forth above, nothing herein shall preclude the City from maintaining an action against Axon Telecom to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of this ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this ordinance. If at the end of such period the City deems that the conditions have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated.

c. If within thirty (30) days after the effective date of an ordinance to terminate this ordinance, in accordance with the provisions herein, Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty-day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason of the violation of the terms, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and/or to abate nuisances maintained in violation thereof.

20. **Revocation of This Ordinance.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this ordinance and all right, privilege or franchise of Axon Telecom as a result of and in response to any of the following events or reasons:

a. Any provision of this ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this ordinance as to cause the same to become null and void; or

b. Axon Telecom commits an act of fraud or deceit against the City in obtaining the grant of this ordinance, or upon being granted Axon Telecom commits such an act against the City.

To revoke this ordinance in accordance with the provisions of this section, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. Prior to the enactment of such ordinance, Axon Telecom shall be provided with timely written notice by certified mail, and Axon Telecom shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate this ordinance Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not this ordinance was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by the reason addressed by this section, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

21. **Miscellaneous Provisions.**

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain Axon Telecom's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other rights, privileges or franchises to other persons. However, no such additional grant shall in any way affect the rights or obligations of Axon Telecom.

b. Exclusive Benefit of Axon Telecom. The right, privilege or franchise granted to Axon Telecom by this ordinance shall be for the sole use of Axon Telecom to provide conduit services as authorized herein. These rights are for the exclusive benefit of Axon Telecom, except where otherwise provided herein, or when authorized by the City.

c. Axon Telecom is Without Remedy Against the City. Axon Telecom shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this ordinance, or for the failure of the City to have the authority to grant, all, or any part, of this ordinance granted. Second, Axon Telecom expressly acknowledges that it accepted this ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the right, privilege or franchise conferred upon Axon Telecom. Third, Axon Telecom acknowledges by its acceptance of this ordinance that it has not been induced to agree to the terms of this ordinance upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this ordinance not expressed herein. Finally, Axon Telecom acknowledges by the acceptance of this ordinance that it has carefully read the provisions, terms, and conditions of this ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this ordinance to the contrary, the construction, operation and maintenance of Axon Telecom's facilities by Axon Telecom or its agent shall be in accordance with all laws and regulations of the United States the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, Axon Telecom shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Axon Telecom's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Axon Telecom shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Axon Telecom's failure to comply with any law or regulation governing the operation of said facilities may result in a forfeiture of the granting of the right, privilege or franchise created by this ordinance.

e. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of the agreement created by this ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

f. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Axon Telecom's or the City's control.

g. Severability. Any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, an provision and such holding shall not affect the validity of the remaining portio

22. **Effectiveness.** This ordinance is made under and in conformity with the laws of the Stat Before the final passage of this ordinance, it shall be read at three (3) regular meet Governing Body. After final passage, this ordinance shall take effect and be in force expiration of sixty (60) days from the date of final passage by the governing body and after pu in the official City newspaper for two consecutive weeks following final passage, unless a proper protest is filed, or Axon Telecom fails to provide written acceptance within the sixty (60) day period.

First Reading: 1/17/2000 *Second Reading:* 2/7/2000 Third Reading: 3/6/2000

Passed by the Council the 6 day of March, 2000.

Approved by the Mayor the 6 day of March, 2000.

(SEAL)

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Asst. City Attorney