



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

ROBERT SILVA  
Mayor  
SERGIO VALDEZ  
Mayor Pro Tempore  
JOSEPH AMADOR  
ROLANDO CASTRO  
JOSEPH RIOFRIO

## AGENDA MENDOTA CITY COUNCIL Regular City Council Meeting CITY COUNCIL CHAMBERS 643 QUINCE STREET January 26, 2016 6:00 PM

VINCE DiMAGGIO  
City Manager  
JOHN KINSEY  
City Attorney

The Mendota City Council welcomes you to its meetings, which are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours, 8 AM - 5 PM.

### CALL TO ORDER

### ROLL CALL

### FLAG SALUTE

### INVOCATION

### FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda

### CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council on any matter not listed on the agenda involving matters within the jurisdiction of the City Council. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

## PRESENTATION

1. Rich Mostert from the Valley Small Business Development Corporation to provide information on their services.
2. Receive presentation from Price, Paige, & Company on the 2014/2015 City audit.

## APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the Special City Council meeting of December 28, 2015 and the Regular City Council meeting of January 12, 2016.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

## CONSENT CALENDAR

Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. JANUARY 07, 2016 THROUGH JANUARY 22, 2016  
WARRANT LIST CHECKS NO. 40436 THRU 40487  
TOTAL FOR COUNCIL APPROVAL = \$181,893.51
2. Proposed adoption of **Resolution No. 16-03**, approving the salary schedule for Police Lieutenant.
3. Proposed adoption of **Resolution No. 16-04**, adjusting the salary schedule for the Public Works Director position.
4. Proposed adoption of **Resolution No. 16-05**, authorizing to release final payment of the retention to AJ Excavation, Inc., the contractor for the 6<sup>th</sup> Street Reconstruction Project.
5. Proposed adoption of **Resolution No. 16-06**, approving the submittal for the upcoming Regional Surface Transportation Program call for projects.

## NEW BUSINESS

1. Public Hearing: Introduction of **Ordinance No. 16-01**: Adopting Chapter 5.17 (Cable Television Franchise) and Chapter 13.17 (Cable Video Services and Fees) of the Mendota Municipal Code, and Repealing Ordinance No. 284, and Give First Reading, by Title only, with Second Reading waived.

**DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Public Works  
a) Monthly Report
2. City Attorney  
a) Update
3. City Manager


**MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)
2. Mayor

**ADJOURNMENT**

**CERTIFICATION OF POSTING**

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of January 26, 2016, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, January 22, 2016 at 3:25 p.m.

  
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Celeste Cabrera, Deputy City Clerk



## MINUTES OF MENDOTA SPECIAL CITY COUNCIL MEETING

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**Special Meeting**

**December 28, 2015**

**Meeting called to order by Mayor Silva at 12:30 p.m.**

**Roll Call**

**Council Members Present:** Mayor Robert Silva, Mayor Pro Tem Sergio Valdez, Councilors Joseph Amador, Rolando Castro, and Joseph Riofrio.

**Council Members Absent:** None.

**Flag salute led by Councilor Riofrio in honor of Ray Arroyo.**

### **FINALIZE THE AGENDA**

1. Adjustments to Agenda.
2. Adoption of final Agenda.

City Manager DiMaggio requested to add a Closed Session item in regards to a case of potential litigation.

A motion was made by Councilor Riofrio to adopt the agenda as requested by staff, seconded by Mayor Pro Tem Valdez; unanimously approved (5 ayes).

### **CITIZENS ORAL AND WRITTEN PRESENTATIONS**

None offered.

### **NOTICE OF WAIVING OF READING**

1. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

A motion was made by Councilor Riofrio to approve item 1, seconded by Mayor Pro Tem Valdez; unanimously approved (5 ayes).

### **CONSENT CALENDAR**

1. Council adopt **Resolution No. 15-85**, authorizing the submission of a rebate application.

City Manager DiMaggio reported on the City submitting an application for the California Clean Vehicle Rebate Project to receive funding to acquire three new vehicles; replacing one older police detective vehicle and expanding its fleet with two vehicles; the Council needing to adopt a resolution in order to submit the application; the City receiving additional funding which will also be used to acquire the vehicles; the possibility of utilizing police department impact fees to cover the costs to purchase the vehicles that are not covered by the grants; and purchasing the vehicles from Future Ford of Clovis.

Discussion was held on staff researching what other car dealerships in surrounding counties sell the type of vehicle that will be purchased.

A motion was made to adopt Resolution No.15-85 by Councilor Amador, seconded by Mayor Pro Tem Valdez; unanimously approved (5 ayes).

### **BUSINESS**

1. Council discussion and consideration of a fee agreement with Wanger Jones Helsley PC for professional legal services.

Mayor Silva introduced the item and City Manager DiMaggio reported on negotiations he had with the John Kinsey; a fee agreement that was submitted for the Council's consideration; and services that are included in the monthly retainer that have not been included in the agreements of previous City Attorneys.

Discussion was held on the benefits of having the City Attorney attend Planning Commission meetings; general legal services that are included in the monthly retainer; and the firm reviewing its public agency rate structure annually.

A motion was made to approve the fee agreement and authorize the City Manager to execute the agreement by Councilor Amador, seconded by Mayor Pro Tem Valdez; unanimously approved (5 ayes).

Discussion was held on how the 2015/2016 budget will be affected due to the increase of fees related to legal services.

**CLOSED SESSION**

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
CA Government Code § 54956.9(d)(2): 1 case

At 12:45 p.m. the Council moved into closed session.

At 12:59 p.m. the Council reconvened in open session and City Manager DiMaggio reported that in regards to item 1 of the closed session, there was nothing to report.

Councilor Amador reported on the upcoming WELL Conference.

**ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 1:00 p.m. by Councilor Amador, seconded by Mayor Pro Tem Valdez; unanimously approved (5 ayes).

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Robert Silva, Mayor

ATTEST:

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Matt Flood, City Clerk



## MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

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**Regular Meeting**

**January 12, 2016**

**Meeting called to order by Mayor Silva at 6:00 p.m.**

### **Roll Call**

**Council Members Present:** Mayor Robert Silva, Mayor Pro Tem Sergio Valdez, Councilors Joseph Amador, Rolando Castro, and Joseph Riofrio.

**Council Members Absent:** None.

**Flag salute led by Mayor Pro Tem Valdez.**

**Invocation led by Jesus Sanchez from the Mendota First Baptist Church.**

### **FINALIZE THE AGENDA**

1. Adjustments to Agenda.
2. Adoption of final Agenda.

City Manager DiMaggio requested to add an item to the Consent Calendar due to its time sensitivity.

A motion was made by Councilor Riofrio to add an item to the Consent Calendar, seconded by Councilor Amador; unanimously approved (5 ayes).

A motion was made by Councilor Riofrio to adopt the agenda as requested by staff, seconded by Councilor Amador; unanimously approved (5 ayes).

### **CITIZENS ORAL AND WRITTEN PRESENTATIONS**

**Jaime Galvan (Employment Development Department)** – reported on the upcoming 13<sup>th</sup> Annual Farm Worker Appreciation Day including various donations that have been

received; numerous agencies that will be attending the event; the amount of individuals that are anticipated to attend; the event being held on January 29<sup>th</sup> from 9 a.m. – 2 p.m. at Gonzalez Dance Hall; and various ways that the event is being promoted.

### **APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING**

1. Minutes of the Regular City Council meeting of December 8, 2015, the Special City Council meeting of December 14, 2015, and the Adjourned Special City Council meeting of December 16, 2015.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

A motion was made by Councilor Amador to approve items 1 and 2, seconded by Mayor Pro Tem Valdez; approved (4 ayes, abstain: Valdez).

### **CONSENT CALENDAR**

1. DECEMBER 09, 2015 THROUGH DECEMBER 18, 2015  
WARRANT LIST CHECKS NO. 40311 THRU 40353  
TOTAL FOR COUNCIL APPROVAL = \$319,756.37
2. DECEMBER 28, 2015 THROUGH JANUARY 06, 2016  
WARRANT LIST CHECKS NO. 40354 THRU 40435  
TOTAL FOR COUNCIL APPROVAL = \$414,613.91
3. Council adopt **Resolution No. 16-01**, authorizing the City to enter into a professional services agreement with Provost and Pritchard for Federal Highway Administration Projects.
4. Council adopt **Resolution No. 16-02**, authorizing the use of public safety impact fee funds.

Discussion was held on fees that will be paid to CSJVRMA.

A motion was made to approve items 1 through 4 of the consent calendar by Councilor Amador, seconded by Councilor Riofrio; unanimously approved (5 ayes)

### **BUSINESS**

1. Receive presentation from Provost & Pritchard on the proposed roundabout at the intersection of Oller and Derrick Avenues.

Mayor Silva introduced the item City Engineer McGlasson reported that the Council previously requested that staff create an animation on how a traffic signal and a roundabout would operate at the intersection of Oller and Derrick Avenues; the



animation was created based on the traffic peak hour at the intersection during the year 2030; having to reroute Oller Street in order to create either a roundabout or a traffic signal; the amount of traffic lanes that will be needed to develop an appropriate traffic signal; acquiring land from surrounding properties to develop either option; and the level of service that Caltrans requires the City to meet.

Discussion was held on having John Liu from Caltrans attend a future City Council meeting to discuss the issue; Caltrans favoring to develop a roundabout at the intersection; Caltrans having discretion to develop a roundabout since the intersection includes two state highways; and the amount of funding that is needed to develop a traffic signal at the intersection.

City Engineer McGlasson reported that the roundabout will be developed to also accommodate large vehicles; the basic elements of a roundabout; the importance of having a correctly engineered roundabout to avoid accidents; and the amount of funding currently available for the project.

Discussion was held on the basic elements of a roundabout; the possibility of semi-trailer trucks causing accidents if they do not maneuver through the roundabout correctly; the possibility of utilizing the CMAQ grant to fund a traffic signal; ways that the surrounding businesses will be affected; future commercial land that will be created when the project is developed; costs that will be associated with maintaining a traffic signal should the Council decide to move forward with developing a traffic signal; low maintenance costs associated with a roundabout; safety issues related to a roundabout; the increased safety of pedestrians in a roundabout; and roundabouts in different cities in Fresno County.

A motion was made in favor of a roundabout and to direct staff to move forward with develop a design of a roundabout at the intersection of Oller and Derrick Avenues by Mayor Pro Tem Valdez, seconded by Councilor Riofrio; approved (3 ayes, no: Castro and Silva).

Discussion was held on acquiring surrounding land to develop a roundabout; having John Liu from Caltrans attend a future City Council meeting to discuss the issue; having a public hearing on the item in the future; and ways that emergency vehicles can be affected by the roundabout.

## **DEPARTMENT REPORTS AND INFORMATIONAL ITEMS**

1. Code Enforcement
  - a) Monthly Report

Planning & Economic Development Manager Flood summarized the report including that the Code Enforcement Department is collaborating with the Police Department to ensure that homeless individuals are not inhabiting properties and Code Enforcement Officers are contacting property owners in regards to maintaining weeds on their

properties.

Discussion was held on when individuals are required to obtain an amplified music permit; the need to communicate accordingly with the public about obtaining amplified music permits; Code Enforcement officers ensuring that individuals have an amplified music permits when applicable; officers verifying that DJ's have a business license (7:08 p.m. Mayor Pro Tem Valdez left the Council Chambers); staff amending the noise ordinance in the zoning code so that standards can be created; the importance of the zoning ordinance to comply with the General Plan; individuals selling food illegally out of their homes; and Mr. Michael Rodriguez applying for a variance (7:10 p.m. Mayor Pro Tem Valdez returned to the Council Chambers).

2. Police Department  
a) Monthly Report

Discussion was held on an increase of individuals drinking in public; increase of individuals driving without a license or with a suspended license; instances when vehicles will not be towed when the driver has a suspended license; a case in which a female victim was stabbed; the suspect of the case still at large; a decrease of auto thefts; a recently created police department Facebook page; police department personnel update; new vehicles that were acquired; developing a neighborhood watch program in the future; and the City's position on the legalization of marijuana.

3. City Attorney  
a) Update

City Attorney Kinsey thanked the Council for the opportunity to serve as City Attorney; reported on working with staff to update the zoning ordinance; the Medical Marijuana Regulation and Safety Act which provides state licensing system; the act is going to preserve local control and it is not intended to displace zoning and police power authority of local governments; the different options that the City has in regards to the issue; the possibility of the City moving forward with the same stance that Fresno County has taken; meeting with staff in regards to the issue to make sure that the City complies with state law; reported on AB 2 which provides the opportunity for local government to create Community Revitalization and Investment Authorities which are similar to previous Redevelopment Agencies; the restrictions that are associated with developing Community Revitalization and Investment Authorities; investigating whether the City can participate; and bringing back a recommendation to the Council at a future meeting.

Discussion was held on school districts not being able to participate in the authorities; flooding issues in Mendota; and an injunction that was inacted in the 1980s.

5. City Manager

City Manager DiMaggio reported on an upcoming Planning Commission meeting which

will be held on January 19<sup>th</sup>; a JPA meeting regarding Prop 1 funding that he will be attending to discuss the fees that each jurisdiction needs to pay to the JPA; staff moving forward with amending the noise ordinance; and an item that will be on the January 26<sup>th</sup> Council meeting in regards to an appeal to staff's decision on not allowing the transfer of an ABC license.

Discussion was held on the status of the city-wide street light retrofit; the upcoming Groundbreaking Ceremony for McDonald's and AutoZone which will be held on January 20<sup>th</sup>; the status of the tertiary treatment project at the Wastewater Treatment Plant; the status of the development of the new Catholic Church; and the possibility of repairing the well at Pool Park.

## **MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS**

1. Council Member(s)  
Council reports

Mayor Pro Tem Valdez inquired as to adjusting the timer of the lights of the basketball courts at Rojas-Pierce Park and explained the importance of proper treatment of the American flag by City employees.

Councilor Amador thanked staff for providing him a list of leased City-owned properties.

Councilor Castro inquired as to the possibility of acquiring more vehicles.

2. Mayor

Mayor Silva inquired as to recognizing community members at future Council meetings.

## **CLOSED SESSION**

1. PUBLIC EMPLOYEE APPOINTMENT  
Title: City Attorney  
Government Code § 54957 (b) (1)

At 8:08 p.m. the Council moved into closed session.

At 8:42 p.m. the Council reconvened in open session and City Manager DiMaggio reported that in regards to item 1 of the closed session, Council gave the City Manager direction to amend the salary schedule of the Public Works Director.

## **ADJOURNMENT**

With no more business to be brought before the Council, a motion for adjournment was made at 8:43 p.m. by Mayor Pro Tem Valdez, seconded by Councilor Amador; unanimously approved (5 ayes).

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Robert Silva, Mayor

ATTEST:

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Matt Flood, City Clerk

**CITY OF MENDOTA**  
**CASH DISBURSEMENTS**  
**1/7/2016-1/22/2016**  
**Check #40436-40487**

Date	Check #	Amount	Vendor	Department	Description
January 7, 2016	40436	\$2,410.54	CUMMINS-ALLISON CORP.	GENERAL-WATER-SEWER	JETSCAN I101 MONEY COUNTER EQUIPMENT
January 11, 2016	40437	\$17,612.00	GUTHRIE PETROLEUM INC.	GENERAL-WATER-SEWER	(1.7) PROPANE, (6742) UNLEADED GASOLINE, (1854) DIESEL FUEL NO 2
January 15, 2016	40439	\$655.97	PETTY CASH	GENERAL-WATER-SEWER	PETTY CASH TAG 533 THROUGH 543 9/25/15-1/12/16: HOTEL PARKING FOR LEAGUE OF CA CITIES, BATTERIES FOR HARASSMENT TRAINING, WATER
January 19, 2016	40440	\$670.72	AMERITAS GROUP	GENERAL	VISION INSURANCE FOR FEBUARY 2016
January 19, 2016	40441	\$2,096.84	BLUE SHIELD OF CALIFORNIA	GENERAL	MEDICAL INSURANCE FOR DECEMBER 2015- REMAINING BALANCE FROM ETF
January 19, 2016	40442	\$140.68	VALLEY PROPANE INC.	STREETS	MANCHESTER 3FT POWER JET HAND BURNER FOR POT HOLES
January 20, 2016	40443	\$1,283.32	ADMINISTRATIVE SOLUTIONS, INC.	GENERAL	(7) HRA ADMINISTRATION JANUARY 2016& ANNUAL FEE; MEDICAL CHECK RUN 1/14/16
January 20, 2016	40444	\$25.98	AIRGAS USA, LLC	WATER	RENT CYL SMALL CARBON DIOXIDE FOR DECEMBER 2015
January 20, 2016	40445	\$1,481.94	ALERT- O- LITE	GENERAL-WATER-SEWER	(6) K-RAIL ; BOOTS RAINSUITS, ORANGE, VESTS; (1000) SANDBAG, (1) FLASHLIGHT, (2) POLY; PATIO HEATER (REIMBURSABLE
January 20, 2016	40446	\$325.00	ALL VALLEY ADMINISTRATORS, LLC	GENERAL-WATER-SEWER	1ST QTR 2016 RETIREMENT PLAN ADMINISTRATION
January 20, 2016	40447	\$4,946.19	AT&T	GENERAL	POLICE DEP. DISPATCH 11/24/15-12/23/15; CITY & PD TELEPHONE BILL 10/24/15-11/25/15
January 20, 2016	40448	\$1,544.76	BAKER MANCOCK & JENSEN PC	GENERAL	PROFESSIONAL SERVICES DECEMBER 2015- DOMESTIC WATER SUPPLY WELL SITE LEASE
January 20, 2016	40449	\$431.69	BEST UNIFORM	GENERAL	(2) POLO, (2) PANT, (1) BOOT, (1) BELT, (2) LOGO POLO - KRystal CORNADO; (1) POLO, (1) EMB STAR (1) NAME - PD S. AYALA
January 20, 2016	40450	\$1,217.25	BSK ASSOCIATES	WATER-SEWER	MONTHLY WASTEWATER, GENERAL EDT, FILTER WATER PLANT PROFILE EDT
January 20, 2016	40451	\$1,375.00	CENTRAL VALLEY SWEEPING	STREETS	SWEEPING DOWNTOWN & PARK AREA
January 20, 2016	40452	\$431.76	COMCAST	GENERAL-WATER-SEWER	INTERNET SERVICES FOR JANUARY, FEBRUARY, MARCH 2016
January 20, 2016	40453	\$175.00	CORELOGIC INFORMATION	GENERAL-WATER-SEWER	REALQUEST INFORMATION PACKAGE FOR DECEMBER
January 20, 2016	40454	\$165.00	COSTCO MEMBERSHIP	GENERAL-WATER-SEWER	2016 MEMBERSHIP DUES
January 20, 2016	40455	\$88.82	CROWN SERVICES CO.	GENERAL-SEWER	(1) PORTABLE TOILET - PD; (1) PORTABLE TOILET W/SINK FOR DECEMBER 2015
January 20, 2016	40456	\$654.76	CROWN SHORTLOAD CONCRETE	STREETS	(5) 6 SACK CONCRETE DERRICK/180
January 20, 2016	40457	\$600.00	D&D DISPOSAL INC.	GENERAL	ANIMAL DISPOSAL 12/09/15 AT 912 MARIE ST
January 20, 2016	40458	\$46.95	DATAMATIC, INC.	WATER	MAINTENANCE & SOFTWARE SERVICE FEBRUARY 2016
January 20, 2016	40459	\$68.46	NANCY DIAZ	GENERAL-WATER-SEWER	MILEAGE REIMBURSMET FOR BANK DEPOSITS/TRANSFERS 10/29/15-12/30/15
January 20, 2016	40460	\$8,750.00	FIREBAUGH POLICE DEPARTMENT	GENERAL	DISPATCH SERVICE 12/1-31/2015 PD

**CITY OF MENDOTA  
CASH DISBURSEMENTS  
1/7/2016-1/22/2016  
Check #40436-40487**

January 20, 2016	40461	\$250.80	FRESNO COUNTY SHERIFF	GENERAL	PRISONER PROCESSING SERVICES FOR NOVEMBER 2015; RMS JMS ACCESS FEE FOR DECEMBER 2015
January 20, 2016	40462	\$434.00	FRESNO MOBILE RADIO INC.	GENERAL	POLICE DEPARTMENT RADIO FOR DECEMBER 2015
January 20, 2016	40463	\$982.50	GIERSCH & ASSOCIATES INC.	WATER	WTP CHEM FEED MODIFICATIONS 11/2/15-11/5/15
January 20, 2016	40464	\$170.00	GOVERNMENT FINANCE OFFICERS ASSOCIATION	GENERAL	MEMBERSHIP RENEWAL 2/1/16-1/31/17
January 20, 2016	40465	\$594.88	HYATT REGENCY	GENERAL	LCW ANNUAL CONFRENCE- C. JOHNSON 2/24-26/16
January 20, 2016	40466	\$400.20	CHARLES JOHNSON	GENERAL	PER DIEM- LCW CONFERENCE SAN FRANCISCO 2/24/16
January 20, 2016	40467	\$551.00	KERWEST INC.	GENERAL-WATER-SEWER	CLASSIFIED ADV: HELP WANTED, ADMINISTRATIVE ASSITANT 12/23/15, 12/30/15, DEC 23 THROUGH JANUARY 13,15/16
January 20, 2016	40468	\$989.98	KOPPEL & GRUBER	CFD FUND	ANNUAL ADMINISTRATION SERVICES OCTOBER THROUGH DECEMBER 2015
January 20, 2016	40469	\$4,839.12	LEAGUE OF CALIFORNIA CITIES	GENERAL-WATER-SEWER	MEMBERSHIP 2016-BASED ON 2008 POPULATION
January 20, 2016	40470	\$52,545.15	MID VALLEY DISPOSAL, INC	STREETS - REFUSE	10 YRD ROLL OFF EXCHANGE, 30 YRD ROLL OFF EXCHANGE, 40 YRD ROLL OFF EXCHANGE; CONTRACT SERVICES FOR DECEMBER 2015
January 20, 2016	40471	\$6,000.00	MOUNTAIN VALLEY ENVIRONMENTAL SERVICES	WATER-SEWER	WATER TREATMENT, DISTRIBUTION, WASTEWATER, CPO SERVICES
January 20, 2016	40472	\$541.64	OFFICE DEPOT	GENERAL-WATER-SEWER	(1) FOLDER, (1) POST IT, (2) DIVIDER(JERR), (1) MARKER, (2) PAPER (CH), (1) TAPE, (3) PAPER (PD), (1) SORTER (JERRY), (1) TONER (CH)
January 20, 2016	40473	\$3,797.50	PREMIER ACCESS	GENERAL	DENTAL INSURANCE FOR FEBRUARY 2016
January 20, 2016	40474	\$2,607.74	PROVOST & PRITCHARD	GENERAL	2015 APPLICATION PROCESSING MENDOTA POOL BYPASS REVIEW & PLANNING SERVICES- CALRENEW BORREGO PROJECT
January 20, 2016	40475	\$2,805.63	R&B COMPANY ACCOUNTING DEPT	WATER	(3) 1" SENSUS SRI WATER METER RDG USG, (500) TUBING, (20) SS INSERT, (10) MTR CPLG, (3) 1" SENSUS SRI WATER METER RDG USG, (2) 4 ROMAC
January 20, 2016	40476	\$19.95	SEBASTIAN	GENERAL	ALARM SERVICES FOR 10/21/2016 (PD)
January 20, 2016	40477	\$713.68	UNION PACIFIC RAILROAD COMPANY	STREETS	ENCROACHMENT ROADWAY ADJ TO RENT 10/2004-1 ENROACHMENT PUBLIC ROADWAY2/1/2016-2/26/2016
January 20, 2016	40478	\$200.00	STATE RESOURCES CONTROL BOARD	WATER	ANNUAL PERMIT FEE 1/1/2016-12-31/2016
January 20, 2016	40479	\$383.99	WAGNER JONES HELSLEY PC ATTORNEYS	SEWER	LEAGAL SERVICES THRU 12/15/2015-TERTIARY TREATMENT FACILITY
January 22, 2016	40480	\$44,305.59	A.J. EXCAVATION INC.	STREETS	FINAL RETAINAGE PAYMENT FOR 6TH STREET RECONSTRUCTION
January 22, 2016	40481	\$4,223.03	MENDOTA SMOG & REPAIR	GENERAL-WATER-SEWER	UNITS M80 OIL CHANGE, M86 AC COMPRESSOR, M83 OIL CHANGE ,M85 OIL CHANGE , M88 REPLACE WINDOW MOTOR, M90,OIL CHANGE M84,M82
January 22, 2016	40482	\$2,789.85	PG&E	GENERAL-WATER-SEWER	CITY WIDE UTILITIES 12/9/15-1/7/16
January 22, 2016	40483	\$504.00	SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT	WATER	16/17 ANNUAL PERMITS TO OPERATE GENERATOR
January 22, 2016	40484	\$490.31	TCM INVESTMENTS	GENERAL	LEASE PAYMENT COPY MACHINE CITY HALL DECEMBER 2015 & LEASE PAYMENT POLICE DEPT COPY MACHINE DECEMBER 2015
January 22, 2016	40485	\$1,207.50	TECHNICON ENGINEERING	STREETS	6TH STREET & PEREZ STREET RECONSTRUCTION 11/30/15

CITY OF MENDOTA  
CASH DISBURSEMENTS  
1/7/2016-1/22/2016  
Check #40436-40487

January 22, 2016	40486	\$2,040.50	THE BANK OF NEW YORK MELLON ATTENTION: MARINA MEZA	SEWER	JOINT POWERS 210-1 WASTEWATER PROJECT 1/16-1/31/15
January 22, 2016	40487	\$306.34	USA BLUEBOOK	WATER	(3) 55-60 GALLON COMMERCIAL WASTE BAG & (2) CONNECTOR ASM 5-PIN

***\$181,893.51***

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**AGENDA ITEM - STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** GREGG L. ANDREOTTI, CHIEF OF POLICE

**VIA:** VINCE DIMAGGIO, CITY MANAGER

**SUBJECT:** ADOPT SALARY SCHEDULE TO FUND THE POLICE LIEUTENANT POSITION

**DATE:** JANUARY 26, 2015

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**ISSUE:**

Should the City Council approve a salary schedule to fund the police lieutenant position?

**BACKGROUND:**

The Mendota Police Department currently does not staff the lieutenant (middle management) position. There is no dedicated second in command to the Chief of Police. In the absence of the chief either a sergeant is designated or all situations normally handled by the chief are addressed by the on duty sergeant.

The Police Department currently funds five sergeant positions. One position is designated as an administrative/detective assignment that also backfills for any sergeant vacancy. The other sergeant positions are assigned to each of the four field service patrol shifts. Currently, the administrative/detective sergeant position is vacant and has been for several months.

The position of lieutenant currently exists within the City's authorized job descriptions. The proposal before the Council would approve the salary schedule for the position of police lieutenant thereby allowing the Police Chief to fill the position. Funding would transfer from the vacant sergeant position. The vacant sergeant position would remain unfilled. There would be no increase in permanent full-time staffing to the department.

The lieutenant will be an administrative position situated in the department's organization chart between the Police Sergeant/Records Manager and Chief of Police. The lieutenant will be the direct second in command to the Chief and responsible for administrative support, operations oversight, criminal and administrative investigations and assist with supervisor and officer development, shift oversight and agency leadership.



**Recommended Salary Schedule:**

The following recommendation is a result of comparing the below listed cities:

**Police Lieutenant Salary Analysis of Comparable Cities**

<b>City Name</b>	<b>Low End</b>	<b>High End</b>	<b>Average</b>
Kerman	\$32.98	\$44.19	\$38.59
Firebaugh	\$23.86	\$38.87	\$31.37
Woodlake	\$36.69	\$42.01	\$39.35
Selma	\$31.50	\$38.29	\$34.90
Chowchilla	\$36.24	\$42.01	\$39.13
Coalinga	\$28.82	\$38.05	\$33.43
Kingsburg	\$33.70	\$40.97	\$37.34
Parlier	\$29.83	\$38.07	\$33.95
<b>Average</b>	<b>\$31.70</b>	<b>\$40.57</b>	<b>\$36.13</b>

**Mendota Police Department Recommended Lieutenant Salary Schedule**

Step-1	Step-2	Step-3	Step-4	Step-5
\$31.7000	\$33.2850	\$34.9492	\$36.6966	\$38.5314

**FISCAL IMPACT:**

Due to salary savings currently being experienced by not filling the vacant sergeant’s position, there will be no fiscal impact to the department in this fiscal year. However, in future fiscal years, there will be a fiscal average annual base salary increase of \$26,125 and benefit increase of \$895.

**RECOMMENDATION:**

Staff recommends that the Council adopt the attached resolution approving the salary schedule for police lieutenant.

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA TO ADOPT  
SALARY SCHEDULE FOR THE POSITION  
OF POLICE LIEUTENANT**

**RESOLUTION NO. 16-03**

**WHEREAS**, the Mendota Police Department is charged with preserving the health and safety within the community of Mendota by providing law enforcement services; and

**WHEREAS**, a goal of city leaders and administrators is to further unite the community and its Police Department through trust and cooperation by establishing community partnerships; and

**WHEREAS**, the Police Department has a designated Lieutenant position but no salary schedule assigned to said position; and

**WHEREAS**, once a salary schedule is approved by the City Council, it is the intention of the Police Chief to leave the currently vacant sergeant position unfilled and use the savings realized to hire a police lieutenant with no net increase in police department staffing; and

**WHEREAS**, establishing the salary schedule for a police lieutenant, thereby permitting the Chief of Police to fill the position, will enable the Police Department to have a dedicated second in command to entrust overall command to in his absence; and

**WHEREAS**, in addition, the police lieutenant will assist with administrative support, supervisor and officer development, operations oversight, criminal and administrative investigations and agency leadership; and

**WHEREAS**, staff analyzed the salary structure for similar positions in other similarly-situated organizations and, based on that survey, recommends the establishment of the following salary schedule:

Step-1	Step-2	Step-3	Step-4	Step-5
\$31.7000	\$33.2850	\$34.9492	\$36.6966	\$38.5314

***NOW, THEREFORE, BE IT RESOLVED***, by the City Council of the City of Mendota to establish the salary schedule for police lieutenant as stated above.

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Robert Silva, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26<sup>th</sup> day of January, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Matt Flood, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** VINCE DIMAGGIO, CITY MANAGER  
**SUBJECT:** APPROVAL OF SALARY SCHEDULE FOR PUBLIC WORKS DIRECTOR POSITION  
**DATE:** JANUARY 26, 2016

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**BACKGROUND**

On January 12, 2016, the City Council met in closed session to discuss the salary of the Public Works Director and to provide direction to the City Manager regarding the same and other related issues. During the closed session, the Council directed the City Manager to amend the salary schedule for the position of Public Works Director. The attached resolution memorializes that direction.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution adjusting the salary schedule for the Public Works Director position.

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA AMENDING  
THE SALARY SCHEDULE FOR THE  
POSITION OF PUBLIC WORKS DIRECTOR**

**RESOLUTION NO. 16-04**

**WHEREAS**, the Public Works Director position is presently responsible for daily supervision of all parks, roads, storm drain, and public buildings within the City of Mendota; and

**WHEREAS**, the Public Works Director also serves as Chief Building Official and manages all in-house planning and land use related issues; and

**WHEREAS**, the Public Works Director will also supervise the Public Utilities Department and all associated functions in the absence of the Public Utilities Director; and

**WHEREAS**, staff performed a survey of the salaries of other Public Works Director positions in Fresno County in similarly situated cities, and determined that Mendota's salary schedule for the Public Works Director position was significantly lower than those cities; and

**WHEREAS**, the City Council provided direction to the City Manager to bring forth a revised salary schedule for the Public Works Director position in order to become proximate with other similarly situated cities in the County; and

**WHEREAS**, staff analyzed similar positions in other organizations and established the following salary schedule:

Step	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Hourly Rate	\$41.3461	\$43.4134	\$45.5841	\$47.8633	\$50.2565
Annually	\$85,999.88	\$90,299.87	\$94,814.92	\$99,555.66	\$104,533.52

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota to establish the salary schedule for the position of Public Works Director as included herein.

\_\_\_\_\_  
Robert Silva, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26<sup>th</sup> day of January, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Matt Flood, City Clerk

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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** MICHAEL OSBORN, ASSISTANT CITY ENGINEER  
**VIA:** VINCE DIMAGGIO, CITY MANAGER  
**SUBJECT:** 6<sup>TH</sup> STREET RECONSTRUCTION PROJECT  
**DATE:** 1/19/16

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**ISSUE**

Should the City Council authorize the City Manager to release final payment of the retention to AJ Excavation, Inc., the contractor for the 6<sup>th</sup> Street Reconstruction Project?

**BACKGROUND**

Resolution 15-48 authorized the award of the project to AJ Excavation, Inc. This project reconstructed 6<sup>th</sup> Street from Oller St. to Derrick Ave.; a portion of Perez Street from the Mendota Elementary School bus turnaround to Lozano St.; and, by contract change order, Quince Street from 8<sup>th</sup> St. to 10<sup>th</sup> St. On December 9, 2015 the project was found to be substantially complete and on December 18, 2015 a Notice of Completion was filed with the Fresno County Recorder.

Following recordation of the Notice of Completion, a 35 day waiting period commenced during which any stop notices or liens may have been filed against the contractor.

**ANALYSIS**

To the best of staff's knowledge, no such liens or stop notices have been filed during this period; therefore payment of the retention may be made in full.

**FISCAL IMPACT**

Final retainage payment of \$44,305.59 that was included in the approved budgets for Fiscal Years 2014/15 and 2015/16.

**RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to release final payment of the retention to AJ Excavation, Inc., the contractor for the 6<sup>th</sup> Street Reconstruction Project.

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA TO AUTHORIZE  
PAYMENT OF RETAINAGE TO CONTRACTOR  
FOR 6<sup>TH</sup> STREET RECONSTRUCTION PROJECT**

**RESOLUTION NO. 16-05**

**WHEREAS**, Resolution 15-48 authorized award of the 6<sup>th</sup> Street Reconstruction project to AJ Excavation, Inc.; and

**WHEREAS**, this project was found to be substantially complete on December 9, 2015, and

**WHEREAS**, the Notice of Completion was filed with the Fresno County Recorder on December 18, 2015, and

**WHEREAS**, during the required 35 day waiting period no stop notices or liens have been filed with the City against AJ Excavation, Inc. in relation to this project, and

**WHEREAS**, payment of the full contract amount including retention was included in the approved budgets for Fiscal Years 2014/15 and 2015/16

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Mendota that the City Manager is hereby authorized to release payment of the retention in the amount of \$44,305.59 to AJ Excavation, Inc., as final payment for this project.

\_\_\_\_\_  
Robert Silva, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26 day of January, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Matt Flood, City Clerk



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**AGENDA ITEM**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** MICHAEL OSBORN, P.E., ASSISTANT CITY ENGINEER

**VIA:** VINCE DIMAGGIO, CITY MANAGER

**SUBJECT:** DERRICK AND 7<sup>TH</sup> RSTP GRANT APPLICATION – AB 1012

**DATE:** 1/20/16

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**ISSUE**

Should the City Council adopt the attached resolution authorizing submittal of the 7<sup>th</sup> and Derrick intersection improvement project as part of the upcoming Regional Surface Transportation Program (RSTP) call for projects?

**BACKGROUND**

On February 5<sup>th</sup>, 2016, Provost & Pritchard, on behalf of the City of Mendota, intend to submit an application for RSTP grant funding for the completion of the long anticipated Derrick and 7<sup>th</sup> Street Improvement Project to the Fresno Council of Governments through the regional competitive bid process.

Approval of AB 1012 now requires that both State and Federal funds be used in a “timely” manner. In order to avoid losing any Federal or State funds to our Region, the “use it or lose it” requirements of AB 1012 place local governmental agencies in a position that they must be able to deliver their projects on time. That is, they must be able to meet their project delivery schedules as proposed and as programmed within the Federal Transportation Improvement Program (FTIP). Because the issue of project delivery is so important, the RSTP Scoring Committee may take into consideration as a part of a project’s “subjective” evaluation score (20/100 points), the local agency’s ability to deliver projects in a timely manner (i.e. past performance/current ability to deliver projects rapidly).

The approval of the attached resolution completes the application and fulfills the intent of AB 1012.

**ANALYSIS**

The project schedule is currently being developed to allow the City to meet project delivery milestones based on the dates funding will be available for reimbursement. Tentatively,

Preliminary Engineering will be completed in FY 2016/17 with Construction following and being completed early in FY 2017/18. All required rights-of-way for this project have been obtained by the City.

### **FISCAL IMPACT**

If the Fresno COG Board chooses to fund the project, RSTP funding would cover approximately 88% of the project and the RSTP “Lifeline” funds would cover the remaining 12%. There is no anticipated impact to the General Fund if the project is funded through this application.

### **RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution approving submittal for the upcoming Regional Surface Transportation Program (RSTP) call for projects.

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA SUPPORTING  
AND IMPLEMENTING TIMELY USE OF FUNDING  
FOR FEDERAL TRANSPORTATION PROJECT  
SELECTION**

**RESOLUTION NO. 16-06**

**WHEREAS**, AB 1012 has been enacted into State Law in part to provide for the “timely use” of State and Federal funding; and

**WHEREAS**, the City is able to apply for and receive Federal and State funding under the Regional Surface Transportation Program; and

**WHEREAS**, the City desires to ensure that its projects are delivered in a timely manner to preclude the Fresno Region from losing those funds for non-delivery; and

**WHEREAS**, it is understood by the City that failure for not meeting project delivery dates for any phase of a project may jeopardize federal or state funding to the Region; and

**WHEREAS**, the City must demonstrate dedicated and available local matching funds; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Mendota hereby agrees to ensure that all project delivery deadlines for all project phases will be met or exceeded.

**BE IT FURTHER RESOLVED**, that failure to meet project delivery deadlines may be deemed as sufficient cause for the Fresno Council of Governments Policy Board to terminate an agency’s project and reprogram Federal/State funds as deemed necessary.

**BE IT FURTHER RESOLVED** that the City Council does direct its management and engineering staffs to ensure all projects are carried out in a timely manner as per the requirements of AB 1012 and the directive of the City Council.

\_\_\_\_\_  
Robert Silva, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26 day of January, 2016, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Matt Flood, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CHARLES W. JOHNSON, DIRECTOR OF ADMINISTRATIVE SERVICES  
**VIA:** VINCE DIMAGGIO, CITY MANAGER  
**SUBJECT:** INTRODUCTION OF ORDINANCE NO. 16-01: ADOPTING CHAPTER 5.17 (CABLE TELEVISION FRANCHISE) AND ADDING CHAPTER 13.17 (CABLE VIDEO SERVICES AND FEES) OF THE MENDOTA MUNICIPAL CODE AND REPEALING ORDINANCE NO. 284 (ESTABLISHING A PROCEDURE FOR THE GRANTING OF FRANCHISES FOR BROADBAND AND TWO-WAY COMMUNICATION SYSTEMS), AND GIVE FIRST READING, BY TITLE ONLY, WITH SECOND READING WAIVED  
**DATE:** JANUARY 26, 2016

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**ISSUE**

Consideration of an ordinance adopting Chapter 5.17 (Cable Television Franchise) and Chapter 13.17 (Cable Video Services and Fees) of the Mendota Municipal Code, and repealing Ordinance No. 284.

**BACKGROUND**

The City of Mendota has managed the operations of cable company access since the advent of cable services in Mendota since the early 1980s. This access was originally authorized via Ordinance No. 284, "An Ordinance of the City of Mendota Establishing a Procedure for The Granting of Franchises for Broadband and Two-Way Communication Systems" (1981) which articulates the terms by which franchises shall operate within the City. Shortly thereafter, the City of Mendota and other Westside cities formed an alliance to enter into a Joint Exercise of Power Agreement (JPA Agreement) between the cities of Dos Palos, Firebaugh, Kerman, Mendota and San Joaquin on October 29, 1981.

Under the JPA Agreement the above cities created the Westside Cities Cable Television Authority (the "Authority") to regulate and impose conditions to the award of franchises operations for cable television system within each respective City. This alliance served the cities' general needs by negotiating fees and conditions for cable television service providers.

**ANALYSIS**

Due to the dissolution of the Authority, staff has analyzed new laws adopted by State Legislature which no longer allows the JPA to have legal authority to negotiate or issue cable franchises due to the implementation of the Digital Infrastructure and Video Competition Act ("DIVCA") of 2006, set forth by Public Utilities Code Section 5800.

Ordinance 284 is now obsolete, requiring substantial changes to the Mendota Municipal Code to reflect current laws and practices.

Under the DIVCA, some authority is retained by the City, including the authority to collect franchise fees, to collect certain PEG fees (for public, educational and governmental channels) and to monitor compliance with state and federal customers service standards.

Authority retained by the City under the DIVCA must be implemented by local ordinance. As a result, staff has prepared a proposed ordinance, adding Chapter 5.17 (Cable Television Franchise) and Chapter 13.17 (Cable Video Services and Fees) of the Mendota Municipal Code, and repealing Ordinance No. 284.

The purpose of the proposed ordinance is to authorize the City franchise fees (5%), City PEG fees (1%) and customer services penalties for material breaches of state and federal customer service and protection standards. The proposed ordinance also addresses the requirement for an encroachment permit for work in the public right-of-way.

Franchise fee. The 5% franchise fee may be used for any lawful purpose. It is in recognition of the franchisee's use of the public right-of-way.

PEG fee. The amount of the PEG fee owed to the City under the proposed ordinance is 1%.

Customer services fines. The City is authorized under the Act to monitor compliance with federal and state customer service standards and, by ordinance, to impose fines for material breaches. The upper limits of the fines are set by statute. The proposed ordinance sets those fines as follows:

- \$500 for a first violation, per day, up to \$1,500.
- \$1,000 for a second violation of the same nature, per day, up to \$3,000.
- \$2,500 for third or further violations of the same nature within a 12-month period, per day, up to \$7,500.

Implementation of the aforementioned ordinance will help ensure that citizens of Mendota are provided with optimal cable television service by any franchise with the desire to conduct business within city limits and establish an efficient administrative process for city staff.

### **RECOMMENDATION**

Introduce ordinance and give first reading, by title only, with second reading waived.

**FISCAL IMPACT**

The proposed ordinance will assure timely payment of the 5% franchise fee and the 1% PEG fee as provided by state law. The exact fiscal impact of the ordinance is unknown at this time. However, based on prior franchise fee allocation received from the Westside Cities Cable Television Authority the City received approximately \$6,500 per fiscal quarter towards General Fund. New statewide video franchise holders may attract customers of the existing cable company, which may result in increased or decreased revenues to the City.

AN ORDINANCE OF THE CITY OF MENDOTA.  
ESTABLISHING A PROCEDURE FOR THE  
GRANTING OF FRANCHISES FOR BROADBAND  
AND TWO-WAY COMMUNICATION SYSTEMS.

THE CITY COUNCIL OF THE CITY OF MENDOTA DOES ORDAIN  
AS FOLLOWS:

- Section 10 Definitions
- Section 20 Franchise To Install And Operate
- Section 30 Cable Television Service
- Section 40 Franchise Payments
- Section 50 Franchise Term: Duration and Termination
- Section 60 Application For Franchise
- Section 70 Deposits; Bonds; Indemnifications; Insurance
- Section 80 Acceptance Of The Franchise
- Section 90 Limitations Of Franchise
- Section 100 Rights Reserved To The City
- Section 110 Council May Adopt Rules And Regulations
- Section 120 Permits And Construction
- Section 130 Technical Standards
- Section 140 Inspection Of Property And Records
- Section 150 Right To Purchase System
- Section 160 Right Of Intervention
- Section 170 Effect Of Annexations
- Section 180 Safety Requirements
- Section 190 Removal Of Facilities Upon Request
- Section 200 Repair Of Streets And Public Ways
- Section 210 Erection Of Poles
- Section 220 Services
- Section 230 Special Service Areas
- Section 240 Receivership
- Section 250 Authority Of City To Terminate In The Event  
Of Condemnation
- Section 260 Continuity Of Service Mandatory
- Section 270 Financial Disclosure of Independent  
Consultant
- Section 280 Miscellaneous Provisions
- Section 290 Equal Opportunity Employment And Affirmative  
Action Plan
- Section 300 Violations
- Section 310 Severability
- Section 320 Effective Date
- Section 330 Repeal
- Section 340 Publication



Section 10 - Definitions.

For the purposes of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

(a) "City" shall mean the City of Mendota, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or re-incorporated form.

(b) "Council" shall mean the governing body of the City of Mendota or any future board constituting the legislative body of the City.

(c) "Chief Administrative Officer" shall mean the city manager, city administrator, or other designation of the city's chief executive officer, or any designee thereof.

(d) "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a cable television system within all or a specified area in the City. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.

(e) "Person" shall mean any natural person and all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, and societies.

(f) "Grantee" shall mean the person, firm or corporation granted a franchise by the Council under this ordinance, and the lawful successor, transferee or assignee of said person, firm or corporation.

(g) "Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place, including public utility easements.

(h) "Property of Grantee" shall mean all property owned, installed, or used within the City by a Grantee in the conduct of a cable television system business under the authority of a franchise granted pursuant to this ordinance.

(i) "Subscriber" or "User" shall mean any person or entity receiving for any purpose any service of the Grantee's cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, Grantee's original cablecasting, and the local government, education and public access channels; and other services, such as leasing of channels, data and facsimile transmission, pay television, and police, fire and similar public service communication.

(j) "Cable television system;" "CATV;" and "CTV;" "broadband two-way communications system," for the purpose of this ordinance, are terms describing a system employing antennae, microwave, wires, waveguides, coaxial cables, or other conductors, equipment or facilities, designed, constructed or used for the purpose of:

(1) collecting and amplifying local and distant broadcast television or radio signals and distributing and transmitting them;

(2) transmitting original cablecast programming not received through television broadcast signals;

(3) transmitting television pictures, film and video-tape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers;

(4) transmitting or receiving two-way signals or transmissions;

(5) transmitting and receiving all other signals: digital, voice and audio-visual; provided, however, that any of the services, permitted hereunder to be performed, as described above, shall be those performed by the Grantee for subscribers, as herein defined, in the operation of a cable television or CATV system franchised by the City and not otherwise.

(k) "Gross Revenue" shall mean any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from (1) subscribers or users in payment for television or FM radio signals, reception or service received within the City, including installation and line extension charges, (2) any fees or income received by grantee for carrying advertising or commercial messages over the CATV facilities, and (3) from any other person or utilization of or connection to the property of grantee to the extent City may from time to time legally impose a franchise payment on account thereof. Notwithstanding the above, Gross Annual Receipts shall not include any taxes on services furnished by the grantee and imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the grantee for such governmental unit.

(1) "Special Service Area" shall mean an area(s) of the City designated by the Council, if it so elects, in the franchise agreement, where the franchisee may charge different rates, or provide different service(s), than in the remainder of the City.

Section 20 - Franchise to Install and Operate.

(a) A non-exclusive franchise to install, construct, operate, and maintain a cable television system on streets within all or a specific portion of the City may be granted by the Council to any person, whether operating under an existing franchise, who or which offers to furnish and provide such system under and pursuant to the terms and provisions of this ordinance.

No provision of this ordinance may be deemed or construed as to require the granting of a franchise when in the opinion of the Council it is in the public interest to restrict the number of Grantees to one or more.

(b) When and in the event that the Grantee of any franchise granted hereunder uses in his cable television system distribution channels furnished to the Grantee by a telephone company pursuant to tariff or contract on file with a regulatory body having jurisdiction and said Grantee makes no use of the streets independent of such telephone company-furnished facilities, said Grantee shall be required to comply with all of the provisions hereof as a "Licensee" and in such event whenever the term "Grantee" is used herein it shall be deemed to mean and include "Licensee."

Section 30 - Cable Television Service.

(a) Basic Service. The cable television system permitted to be installed and operated hereunder shall:

(1) be operationally capable of relaying to subscriber terminals those television and radio broadcast signals for the carriage of which the Grantee is now or hereafter authorized by the Federal Communications Commission;

(2) be constructed two-way operational from the date of system initiation;

(3) distribute color television signals which it receives in color;

(4) provide at least one (1) channel, without charge, for exclusive use of the City. Additional channels may be required by the City as the need, in the determination of the City, arises;

(5) provide a Community Service Channel Program, as defined by Government Code Section 53066.1, as amended, plus any additional requirements which the Council may, from time to time, impose; and

(6) provide, at a minimum, a fully-equipped permanent studio within the City limits, for public and municipal use, plus such other mobile and portable studios as are, from time to time, necessary.

(7) consist of the state of art technology and be at least equivalent in capacity and capability to those cabletelevision systems constructed and operated in adjacent cities.

(b) Non-basic services. The cable television system permitted to be installed and operated hereunder, may also engage in the business of:

(1) transmitting original cablecast programming not received through television broadcast signals;

(2) transmitting television pictures, film and video-tape programs, not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers or subscribers;

(3) transmitting and receiving all other signals: digital, voice and audio-visual.

(c) Subscriber complaints. In addition to other service regulations adopted by the Council, and excepting circumstances beyond Grantee's control such as Acts of God, riots and civil disturbances, and in providing the foregoing services, the Grantee shall:

(1) limit system failures to minimum time duration by locating and correcting malfunctioning promptly, but in no event longer than twenty-four (24) hours after occurrence, irrespective of holidays or other non-business hours.

(2) upon complaint by a subscriber, make a demonstration satisfactory to the chief administrative officer that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in the regulations of the Federal Communications Commission;

(3) render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible. Planned interruptions, insofar as possible, shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of the system.

(4) maintain an office in the city, which office shall be open during all the usual business hours, with its telephone number listed in directories of the telephone company serving the city, and be so operated that complaints and requests for repairs or adjustment may be received at any time, day or night, seven days a week, or provide a local telephone directory listing and "toll free" telephone service maintained on a seven-day, twenty-four (24) hour basis for the receipt of consumer complaints;

(5) maintain a written record, or "log," listing date of customer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by Grantee in response thereto; said record shall be kept at Grantee's local office, for a period of five (5) years from the date of complaint, and shall be available for inspection during regular business hours without further notice or demand, by the chief administrative officer.

(d) Municipal Service.

(1) With respect to the local government channel, the Grantee shall provide, at the request of the chief administrative officer, use of Grantee's studio, equipment and technical services for production of live and video-tape municipal programs, subject to scheduling requirements of the Grantee;

(2) With respect to the basic television services, the Grantee shall provide all subscriber services, and a tie-in connection, without cost, when the system possesses such facilities and as designated by the Council, subject to the requirements of federal law to:

(i) public schools and community colleges within the City, and

(ii) buildings owned and controlled by the City, used for public purposes and not for residential use (fire and police stations excepted.)

(e) Compatibility and Connectibility.

(1) it is the desire of the City that all cable television systems franchised hereunder shall, insofar as financially and technically possible, be compatible with another and with systems adjacent to the City.

(2) wherever it is financially and technically feasible, the Grantee shall so construct, operate and modify the system so as to tie the same into all other systems within and adjacent to the City.

(f) Uses permitted. Any franchise granted pursuant to the provisions of this ordinance shall authorize and permit the Grantee to engage in the business of operating and providing a cable television system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, and appliances, attachments, and other property as may be necessary and appurtenant to the cable television system; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other Grantee franchised or permitted to do business in the City.

Section 40 - Franchise Payments.

(a) In consideration of the granting and exercise of a franchise to use the streets, as herein defined, for the operation of a cable television system, any Grantee shall pay to the City, during the life of the franchise three (3) percent of the franchisee's gross revenues per year from all cable services in the community except that, to the extent that the Federal Communications Commission, in its Rules and Regulations, at some time in the future allows a City to raise the franchise fee to five (5) percent absent the showings currently required by Section 76.31 of the Rules and Regulations of the Federal Communications Commission, the City reserves the right to increase the franchise fee to a level of 5%.

(b) The percentage payments shall be made in the manner, and at times directed in said franchise or in a Council resolution fixing franchise fees and adopting rules for service and rate regulation.

(c) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this ordinance or for the performance of any other obligation hereunder.

(d) In the event that the above payment is not received by the City within the specified time, Grantee shall pay to the City liquidated damages of two (2) percent per month on the unpaid balance in addition thereto.

Section 50 - Franchise Term: Duration and Termination.

(a) The franchise granted by the Council under this ordinance shall be for a maximum term of fifteen (15) years from the date of its acceptance by the Grantee. During the last year of the franchise, the Grantee may apply to the Council for a renewal of the franchise. Permission to renew for an additional equal term of fifteen (15) years shall not be unreasonably withheld if the Grantee has substantially complied with the terms and conditions of the existing franchise.

(b) The City may terminate any franchise granted pursuant to the provisions of this ordinance in the event of the failure, refusal or neglect by Grantee to do or comply with any material requirement or limitation contained in this ordinance, or any material rule or regulation of the Council or chief administrative officer validly adopted pursuant to this ordinance.

(c) The chief administrative officer may make written demand that the Grantee do or comply with any such requirement, limitation, term, condition, rule or regulation. If the failure, refusal or neglect of the grantee continues for a period of thirty (30) days following such written demand, the chief administrative officer may place his request for termination of the franchise upon the next regular Council meeting agenda. The chief administrative officer shall cause to be served upon such Grantee, at least ten (10) days prior to the date of such Council meeting, a written notice of his intent to request such termination, and the time and place of the meeting, notice of which shall be published by the city clerk at least once ten (10) days before such meeting in a newspaper of general circulation within the city.

(d) The Council shall consider the request of the chief administrative officer and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the Grantee was with just cause.

(e) If such failure, refusal or neglect by the Grantee was with just cause, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(f) If the Council shall determine such failure, refusal or neglect by the Grantee was without just cause, then the Council may, by resolution, declare that the franchise of such Grantee shall be terminated and forfeited unless there be compliance by the Grantee within such period as the Council may fix, or reduce the length of the franchise by a period of time up to the duration of the failure and/or violation.

(g) The termination and forfeiture of any franchise shall in no way affect any of the rights of the City under the franchise or any provision of law.

(h) In the event of any holding over after expiration of any franchise granted hereunder, without the prior consent of the City, expressed by resolution, the Grantee shall pay to the City reasonable compensation and damages, of not less than one hundred percent (100%) of its gross revenue during said period.



Section 60 - Applications for Franchise.

(a) Each application for a franchise to construct, operate, or maintain any cable television systems in this City shall be filed with the City Clerk and shall contain or be accompanied by the following:

(1) the name, address, and telephone number of the applicant;

(2) a detailed statement of the corporate or other business entity organization of the applicant, including but not limited to, the following and to whatever extent required by the City:

(i) the names, residence and business addresses of all officers, directors, and associates of the applicant.

(ii) the names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of 5% or more of the ownership of the applicant and the respective ownership share of each such person or entity.

(iii) the names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable television systems owned or controlled by the applicant, its parent and subsidiary and the areas served thereby.

(iv) a detailed description of all previous experience of the applicant in providing cable television system service and in related or similar fields.

(v) a detailed and complete financial statement of the applicant, prepared by an independent certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Council, setting forth the basis for a

study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the City, or a statement from a certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in this City.

(vi) a statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of applicant's and its parent's or subsidiary's resources committed to the completion thereof.

(3) A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

(i) - a detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.

(ii) a statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges and service charges.

(iii) a detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant and that such standards of operations are in compliance with those contained in Title 47, Subpart K (Section 76.601 et seq.), of the Rules and Regulations of the Federal Communications Commission.

(iv) a copy of the form of any agreement, undertaking, or other instrument proposed to be entered into between the applicant and any subscriber.

(v) a detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm, or corporation which materially relate or pertain to or depend upon the application and the granting of the franchise.

(4) A copy of any agreement covering the franchise area, if existing between the applicant and any public utility subject to regulation by the California Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines, or conduits.

(5) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Council, or by any provision of any other Ordinance of the City (and of its Charter).

(6) An application fee in the sum of \$1,500.00, which shall be in the form of cash, certified or cashier's check, or money order, to pay the costs of studying, investigating, and otherwise processing such application, and which shall be in consideration thereof and not returnable or refundable in whole or in part, except to the extent that such fee exceeds the actual costs incurred by the City in studying, investigating and otherwise processing the application; provided, that any applicant who shall deliver to the City Clerk a written withdrawal of or cancellation of any application hereunder, not later than the seventh (7th) day next following the day such application is received by the City Clerk, shall be entitled to have returned and refunded the sum of \$1,500.00, less any actual costs or expenses incurred by the City by reason of such application.

(b) The Council may, by advertisement or any other means, solicit and call for applications for cable television system franchises, and may determine and fix any date upon or after which the same shall be received by the City, or the date before which the same must be received, or the date after which the same shall not be received, and may make any other determinations and specify any other times, terms, conditions, or limitations respecting the soliciting, calling for, making and receiving of such applications.

(c) Upon receipt of any application for franchise, the Council shall refer the same to a CATV Committee, appointed by the Council, who shall prepare a report and make their recommendations respecting such application, and cause the same to be completed and filed with the Council.

(d) If the Council shall determine to further consider the application, it shall pass a resolution setting a public hearing for the consideration of competing applications; fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objections may file written protests and/or appear before the Council and be heard, and directing the City Clerk to publish said resolution at least once within ten (10) days of the passage thereof in a newspaper of general circulation within the City.

(e) In making any determination hereunder as to any application for a new franchise, or renewal thereof, the Council may give due consideration to the quality of the service proposed, rates to subscriber, income to the City, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other considerations deemed pertinent by the Council for safeguarding the interests of the City and the public.

(f) At the time set for the hearing, or at any adjournment thereof, the Council shall proceed to hear all written protests. Thereafter, the Council shall make one of the following determinations:

(1) that such application(s) be denied, which determination shall be final and conclusive; or

(2) that such franchise be granted and the terms and conditions thereof.

(g) The Council may reject any and all applications and may, if it so desires, request new and/or additional proposals.

(h) The Council may at any time demand and applicant(s) shall provide such supplementary, additional or other information as the Council may deem reasonably necessary to determine whether the requested franchise should be granted.

(i) Any Grantee, upon the effective date of its franchise, shall be required to reimburse City for its estimated engineering, administrative, publication and legal expenses incurred in connection with the processing, evaluation, and preparation of documents relating to such franchise, as such shall be established in the franchise agreement, in a total amount not to exceed Fifteen Thousand Dollars (\$15,000.00).

Section 70 - Deposits; Bonds; Indemnifications;  
Insurance.

(a) Performance Deposit to City.

The Grantee, shall concurrently with the filing of an acceptance of award of the franchise granted under this chapter, deposit in a financial institution selected by the City the sum of Fifty Thousand Dollars (\$50,000.00) in a joint account with the grantee and the City as cosignators. This sum shall be maintained in an interest-bearing joint-account during the period of construction of the cable television system within the city limits, but in no event in excess of three (3) years. The return of the sum plus interest to the grantee shall be conditioned upon the faithful performance of the grantee, and upon the further condition that in the event grantee shall fail to comply with any one or more of the provisions of this Chapter or of the franchise issued to the grantee hereunder, there shall be recoverable from this sum any damages or loss suffered by the city as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee as prescribed herein which may be in default, plus a reasonable allowance for the attorney's fees and costs, up to the full amount of the account.

(b) Performance Bond for Subscribers.

Upon being granted a franchise, and upon filing of the acceptance required under Section 8 hereof, the Grantee shall file, annually, with the City Clerk and shall thereafter during the entire term of such franchise maintain in full force and effect a corporate surety bond, or other adequate surety agreement, in the amount of Ten Thousand Dollars (\$10,000.00). The bond or agreement shall be so conditioned that in the event such Grantee shall fail to comply with any one or more of the provisions of any agreement or undertaking made between Grantee and any subscriber, then there shall be recoverable jointly and severally from the principal and surety any damages or costs suffered or incurred by any subscriber as a result thereof, including

reasonable attorneys' fees and costs of any action or proceeding. Said condition shall be a continuing obligation during the entire term of such franchise and thereafter until Grantee shall have satisfied in full any and all obligations to any subscriber which arise out of or pertain to any such agreement or undertaking.

(c) Hold Harmless Agreement.

Grantee shall indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by Grantee's cable television system), costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including but not limited to damages for injury or death or damage to person or property, and regardless of the merit of any of the same, and against all liability to others, and against any loss, cost, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by Grantee, or the granting thereof by the City.

(d) Defense of Litigation.

Grantee shall at the sole risk and expense of Grantee, upon demand of the City, made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise or the granting thereof by the City.

Grantee shall pay and satisfy or shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against Grantee, the City, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertak-

ing or other assurance required hereunder, or otherwise; provided, that neither Grantee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

(e) Insurance Required.

Upon being granted a franchise, and upon the filing of the acceptance required under Section 8 hereof, the Grantee shall file with the City Clerk and shall thereafter during the entire term of such franchise maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) General Comprehensive Liability Insurance in the amount of One Million Dollars (\$1,000,000.00), together with Bodily Injury Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for injuries including accidental death, to any one person, and subject to the same limit for each person in an amount not less than One Million Dollars (\$1,000,000.00) on account of any one occurrence, and Property Damage Liability Insurance in an amount not less than Fifty Thousand Dollars (\$50,000.00) resulting from any one occurrence; provided, however, as follows:

(i) the City shall be named as an additional insured in any of said insurance policies; and

(ii) where such insurance is provided by a policy which also covers Grantee or any other entity or person, it shall contain the standard cross-liability endorsement.

Section 80 - Acceptance of the Franchise.

(a) No franchise granted under this ordinance shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the City Clerk. Written acceptance, which shall be in the form and substance approved by the City Attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, or in such franchise, or otherwise specified as herein provided.

(b) The written acceptance shall be filed by the Grantee not later than 12:01 o'clock P.M. of the fortieth (40th) day next following the effective date of the ordinance granting such franchise.

(c) In default of the filing of such written acceptance as herein required, the Grantee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the Grantee shall not be received nor filed by the City Clerk. The Grantee shall have no rights, remedies, or redress in the franchise, unless and until the Council, by resolution, shall determine that such acceptance be received or filed, and then upon such terms and conditions as the Council may impose.

(d) In any case, and in any instance, all rights, remedies and redress which may or shall be available to the City, shall at all times be available to the City, and shall be preserved and maintained and shall continuously exist in and to the City, and shall not be in any manner or means modified, abridged, altered, restricted, or impaired by agreement or otherwise.

(e) Any franchise granted and accepted under this ordinance shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by the Grantee, of or pertaining to the construction, operation, or maintenance of any cable television systems in the City.

#### Section 90 - Limitations of Franchise.

(a) Every franchise granted under this chapter shall be non-exclusive.

(b) No privilege or exemption shall be granted or conferred by any franchise granted under this chapter except those specifically prescribed herein.

(c) Any privilege claimed under any such franchise by the Grantee in any street or other public property shall be subordinate to any prior lawful occupancy to the streets or other public property.

(d) Any such franchise shall be a privilege to be held in personal trust by the original Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the Council expressed by resolution, and then only under such conditions as may therein be prescribed. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale, or similar document, a duly executed copy of which shall be filed in the office of the City Clerk within thirty (30) days after any such transfer or assignment. The said consent of the Council may not be unreasonably refused;



provided, however, the proposed assignee must show responsibility as determined by the Council utilizing the factors specified in Section 60, and must agree to comply with all provisions of this ordinance; and provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation, in whole or in part, to secure an indebtedness, except that when such hypothecation shall exceed 25% of the market value of the property used by the franchisee in the conduct of the cable television system, prior consent of the Council shall be required for such a transfer. Such consent shall not be withheld unreasonably.

In the event that Grantee is a corporation, prior approval of the City Council, expressed by resolution, shall be required where there is an actual change in control or where ownership of more than 25% of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already own 50% or more of the voting stock, singly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this ordinance within the meaning of Section 50 of this ordinance.

(e) Time shall be of the essence of any such franchise granted hereunder. The Grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this ordinance by any failure of the City to enforce prompt compliance.

(f) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City.

(g) The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this ordinance or of any franchise issued hereunder or because of its enforcement.

(h) The Grantee shall be subject to all requirements of City laws, rules, regulations, and specifications heretofore or hereafter enacted or established.

(i) Any such franchise granted shall not relieve the Grantee of any obligations involved in obtaining pole or conduit space from any department of the City, utility company, or from others maintaining utilities in streets.

(j) Any franchise granted hereunder, shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by Grantee, or any successor to any interest of Grantee, of or pertaining to the construction, operation, or maintenance of any cable television system in the City; and the acceptance of any franchise hereunder shall operate, as between Grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities, and authorities within the City, to the effect that, as between Grantee and the City, and all construction, operation and maintenance by any Grantee of any cable television system in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not hereunder or pursuant to any other right, privilege, power, immunity, or authority whatsoever.

Section 100 - Rights Reserved to the City.

The City reserves the power to adopt and enforce requirements and regulations on any or all of the following matters, if and when deemed necessary and proper in the public interest by the City Council and are consistent with Rules and Regulations of the Federal Communications Commission:

(a) Procedures for the periodic fixing of reasonable rates and service charges to be charged to subscribers by Grantee, and provisions for the enforcement thereof.

(b) Operational standards pertaining to the quality of audio-visual reception by subscribers.

(c) Channel capacity requirements.

(d) Requirements for carriage of specified television signals, radio signals, and supplementary signal carriage services.

(e) Requirements for the provision of equipment and channels for local production and presentation of cablecast programs, and regulations pertaining thereto.

(f) Requirements and regulations pertaining to minimum service requirements and fair business practices by the Grantee.

(g) Public safety requirements pertaining to the installation and use of all CATV equipment.

(h) Procedures for the investigation and resolution of all complaints by subscribers regarding Grantee's CATV operations, including implementation thereof by designated City officers, employees, or agents.

(i) Public access channels, equipment and facilities.

(j) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any law and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.

(k) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the Grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.

(l) Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

(m) The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under this ordinance and may determine any question of fact which may arise during the existence of any franchise granted hereunder. The chief administrative officer, with the approval of the City Attorney, is hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any Grantee under this ordinance, either on behalf of the City, the Grantee, or any subscriber, in the best interest of the public. Either the Grantee or any member of the public who may be dissatisfied with the decision of the chief administrative officer may appeal the matter to the Council for hearing and determination. The Council may accept, reject or modify the decision of the chief administrative officer, and the Council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of the Grantee or from any provision of this ordinance.

(n) In the event that the Federal Communications Commission elects to deregulate any area of cable communication over which it currently exercises jurisdiction, or grant authority to municipalities to regulate in these areas, any franchise issued pursuant to this ordinance shall be automatically amended, without any additional act by any party to it, to reflect these new municipal regulatory powers, and the City may, if it so elects, adopt rules and regulations in these areas.

Section 110 - Council May Adopt Rules and Regulations.

(a) Standards of Operation

(1) Prior to receiving any applications for franchises, the Council may adopt rules, regulations and standards governing the operation of cable television systems in the City. Such rules, regulations and standards shall apply to and shall govern the operations of the Grantee of any franchise hereunder, and are expressly declared a part of any franchise hereunder.

(2) Rules, regulations and standards not adopted prior to receiving any application for a franchise shall be adopted by the Council at the first regular meeting of the Council next following the effective date of this ordinance, by resolution which shall become effective upon adoption and shall be applicable to any application for a franchise previously received.

(3) The standards adopted pursuant to these procedures shall be exclusively in those areas not either expressly or impliedly preempted by the Federal Communications Commission at the time of adoption.

(4) The Council may at any time adopt new rules or regulations or standards, or may amend, modify, delete, or otherwise change its respective rules or regulations or standards previously adopted, in the following manner: The Council shall pass its resolution of intention stating or describing the rules or regulations or standards to be adopted, amended, modified, deleted, or otherwise changed, and fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection thereto may appear before the Council and be heard. Such resolution shall direct the City Clerk to publish the same at least once within ten (10) days of

the passage thereof in a newspaper of general circulation within the City, and to mail a copy of the same to any Grantee or applicant for a franchise, not more than thirty (30) days nor less than fifteen (15) days prior to the time fixed for hearing thereon.

At the time set for such hearing, or at any adjournment thereof, the Council shall proceed to hear and pass upon such comments as may be presented. Thereafter the Council, by its resolution, may adopt, amend, modify, delete, or otherwise change its respective rules, regulations and standards. Such determination by the Council shall be final and conclusive. The rules and regulations, as amended, modified, deleted, or otherwise changed by the Council shall become effective upon the tenth (10th) day following the adoption of such resolution, unless a longer period shall be otherwise provided in such resolution.

(b) Rates

Unless and until the City Council adopts an ordinance establishing procedures for the periodic fixing of reasonable rates pursuant to Section 100 for the entire city or parts thereof, the following limitations shall apply to the rates charged to subscribers by Grantee:

(1) No increase in rates beyond those represented to a subscriber at the time of initiation of service to such subscriber shall be applied to such subscriber for a period of not less than one year thereafter, except for such additional installations or services as may be requested by such subscriber during such period.

(2) No increase in rates shall be imposed upon subscribers except after thirty days prior notice to subscribers.

(3) No charge shall be imposed upon any subscriber for termination of CATV service or removal of CATV apparatus upon termination of such service. No rate or charge of any type shall be imposed on a subscriber after receipt of notice of termination from such subscriber, unless such subscriber withdraws such notice prior to actual termination of service.

(4) No charge shall be made to any subscriber by reason of the maintenance, repair, removal, or replacement of any CATV apparatus, or property of Grantee, unless the same was caused by the deliberate or negligent act of said subscriber.

(5) Except as otherwise provided by paragraph (1) hereinabove, Grantee shall not charge different rates to subscribers within the same class of service, nor shall there be any difference in the services or facilities or in any other respect between subscribers within the same class except as authorized in Section 230 and, except that installation charges may vary according to the costs of installation. No Grantee shall make or grant any preference to any corporation or person as to rates, charges, services, facilities, or rebates, or in any other respect, nor subject any corporation or person to any prejudice or disadvantage.

(6) The City reserves the power to lower the rates charged subscribers, whether or not they were initially approved by the City Council.

Section 120 - Permits and Construction.

(a) Within thirty (30) days after acceptance of any franchise, the Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the cable television systems, or associated micro-wave transmission facilities.

In connection therewith, copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Grantee's cable television operations, shall also be submitted simultaneously to the chief administrative officer.

(b) Within ninety (90) days after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, Grantee shall commence construction and installation of the cable television system.

(c) Within one hundred eighty (180) days after the commencement of construction and installation of the system, Grantee shall proceed to render service to subscribers, and the completion of the installation and construction

shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled on the map and plan of construction made part of the franchise shall be provided as set forth therein. Grantee is required to complete construction of the entire city in a maximum of three (3) years, although a shorter time may be specified in the franchise.

(d) Grantee shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property unless and until first securing the written approval of the chief administrative officer.

Whenever Grantee shall not utilize existing poles, conduits and other facilities, or whenever existing conduits and other facilities shall be located beneath the surface of the streets, or whenever the City shall undertake a program designed to cause all conduits and other facilities to be located beneath the surface of the streets in any area or throughout the City, in the exercise of its police power or pursuant to the terms hereof, upon reasonable notice to Grantee, any such conduits or other facilities of Grantee shall be constructed, installed, placed, or replaced beneath the surface of the streets. Any construction, installation, placement, replacement, or changes which may be so required shall be made at the expense of Grantee, whose costs shall be determined as in the case of public utilities.

(e) The City shall have the right, free of charge, to make additional use, for any public or municipal purpose, whether governmental or proprietary, of any poles, conduits, or other similar facilities erected, controlled, or maintained exclusively by or for Grantee in any street, provided such use by City does not interfere with the use by Grantee.

(f) In those areas of the City where the transmission or distribution facilities of the respective public utilities providing telephone, communication and electric services are underground or hereafter are placed underground, the Grantee likewise shall construct, operate and maintain all of his transmission and distribution facilities underground. The term "underground" shall include a partial underground system; provided, that upon obtaining the written approval of the chief administrative officer, amplifiers in the Grantee's transmission and distribution lines may be placed in appropriate housings upon the surface of the ground.

(g) The Grantee at his expense shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the chief administrative officer the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, waterpipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements or governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, urban renewal and redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The Grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of Grantee in place, as herein provided. Nothing hereunder shall be deemed a taking of the property of Grantee, and Grantee shall be entitled to no surcharge by reason of anything hereunder.

(h) Upon the failure, refusal, or neglect of Grantee to cause any work or other act required by law or hereunder to be properly completed in, on, over, or under any street within any time prescribed therefor, or upon notice given, where no time is prescribed, the chief administrative officer may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to Grantee an itemized statement of the costs thereof. The Grantee shall, within thirty (30) days after receipt of such statement, pay to the City the entire amount thereof.

(i) In the event that,

(1) the use of any part of the system of Grantee is discontinued for any reason for a continuous period of thirty (30) days, without prior written notice to and approval by the City; or

(2) any part of such system has been installed in any street or other area without complying with the requirements hereof; or

(3) any franchise shall be terminated, cancelled, or shall expire, then the Grantee shall, at the option of the City, and at the expense of Grantee and at no expense to the City, and upon demand of the City, promptly remove from any streets or other area all property of Grantee, and Grantee shall promptly restore the street or other area from which such property has



been removed to such condition as the chief administrative officer shall approve.

The Council may, upon written application therefor by Grantee, approve the abandonment of any of such property in place by Grantee and under such terms and conditions as the Council may prescribe. Upon abandonment of any such property in place, Grantee shall cause to be executed, acknowledged, and delivered to the City such instruments as the City Attorney shall prescribe and approve, transferring and conveying the ownership of such property to the City.

Section 130 - Technical Standards.

(a) The performance of Grantee's cable television system shall meet the technical standards as set forth in Section 76.605 or any successor section of the Federal Communication Commission's Rules and Regulations as those standards may exist from time to time.

(b) Grantee shall conduct performance tests in accordance with the requirements of Section 76.601 or any successor section of the Federal Communication Commission's Rules, and Regulations, as these requirements may apply or be extended from time to time.

Section 140 - Inspection of Property and Records.

(a) At all reasonable times, the Grantee shall permit any duly authorized representative of the City to examine all property of the Grantee, together with any appurtenant property of the Grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control which deal with the operations, affairs, transactions or property of the Grantee with respect to its franchise. If any such maps or records are not kept in the City, or upon reasonable request made available in the City, and if the Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the Grantee.

(b) The Grantee shall prepare and furnish to the City Manager and the City Clerk at the times and in the form prescribed by either of said officers, such reports with respect to its operations, affairs, transactions or property, as may be reasonably necessary or appropriate to the

performance of any of the rights, functions or duties of the City of any of its officers in connection with the franchise.

(c) The Grantee shall at all times make and keep in the City full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets and other public places in the City.

(d) The grantee shall file with the City Manager, on or before the last day in March of each year, a current map or set of maps drawn to scale, showing all CATV system equipment installed and in place in streets and other public places of the City.

#### Section 150 - Right to Purchase System.

Upon the revocation of the franchise, or the expiration of the terms thereof, and upon payment by the Grantor to the Grantee of the fair market value of the Grantee's CATV system, the Grantor may purchase, acquire, takeover, or hold said system. For purposes of this section, "fair market value" shall be determined by valuing the Grantee's system as a going concern. No value shall be assigned to the franchise granted hereunder. Immediately upon a determination of revocation or expiration of the franchise, the Grantor and Grantee shall attempt to mutually agree upon the fair market value of the system. However, if within a reasonable period of time they cannot agree upon the fair market valuation, then said valuation shall be determined by a three-member Board of Appraisers, one selected by the Grantor, one selected by the Grantee, and one selected by the appraisers themselves. The cost of said appraisal shall be borne equally by the Grantor and the Grantee.

#### Section 160 - Right of Intervention.

The Grantor may intervene in any suit or proceeding in which the Grantee is a party, provided that the Grantor's interests are not adequately represented by the existing parties, and provided further, that the disposition of each suit or proceeding without the Grantor's participation may, as a practical matter, impair or impede the Grantor's ability to protect those interests.

Section 170 - Effect of Annexations.

(a) In the event any new territory shall be annexed to the City which is contiguous to only one franchise area in the City, such new territory shall become, by operation of law, a part of such franchise area immediately upon the effective date of such annexation.

(b) In the event any new territory shall become annexed to the City which is contiguous to more than one franchise area in the City or is not contiguous to any franchise area, then the Council shall determine at a public hearing, which Grantee or Grantees, if any, shall serve such new territory.

(c) In the event any portion of the unincorporated territory covered by an existing franchise or license granted by the County of Fresno is annexed to the City prior to the time that the Grantee of such County franchise or license has commenced installation of a CATV system within said territory, all rights acquired by said Grantee under its County franchise or license shall terminate by operation of law as of the date on which the annexation to the City becomes effective.

(d) In the event any portion of unincorporated territory covered by an existing franchise or license granted by the County of Fresno is annexed to the City after the Grantee thereof has commenced or completed construction and installation of a CATV system within said territory, the rights reserved under such franchise or license to the County of Fresno or to any officer thereof, shall inure to the benefit of the City and all regulatory provisions of this ordinance and any other rules and regulations applicable to CATV systems operating within the City, whether then in effect or subsequently adopted, shall be applicable to and binding upon said Grantee. In addition, the Grantee shall be obligated to pay annually to the City, the percentage of the gross receipts established by the County of Fresno in said franchise or license which are derived from its operations within the annexed territory for five years or upon termination of the franchise, whichever is of the shorter time duration, at which time the Council may establish the percentage of gross receipts to be paid to the City.

Section 180 - Safety Requirements.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code, as it now exists or hereafter may be amended and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

(c) All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The Grantee shall strictly adhere to all building and zoning codes currently or hereafter in force. The Grantee shall arrange its lines, cables, and other appurtenances on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person.

Section 190 - Removal of Facilities Upon Request.

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

Section 200 - Repair of Streets and Public Ways.

Any and all streets and public ways which are disturbed or damaged during the construction, operation, maintenance, or reconstruction of the Cable Television System, shall be promptly repaired by the Grantee, at its expense, to the satisfaction of the Grantor.

Section 210 - Erection of Poles.

The Grantee is expected to make use of existing aerial poles. However, the Grantee shall have the right to erect poles if written permission is obtained from the Grantor.

Except as may be permitted, the Grantee shall lease pole space from existing owners for all construction. The Grantor shall utilize its best efforts to assist in arriving at equitable rental agreement.

Section 220 - Services.

Services shall be offered to all City residents in accordance with the provisions of the franchise agreement. The Grantee shall not materially reduce the level of service without permission of the City, but may at its discretion substitute programming to offer subscribers an equal or better array of services.

Section 230 - Special Service Areas.

As defined in the franchise agreement, the Grantee shall be permitted to charge higher installation fees for areas of low housing density, commercial areas and/or underground utility areas that require exceptionally high construction costs.

Upon petition by the Grantee, the Council may defer or indefinitely suspend any expansion into such a special service area after a showing by Grantee that such expansion would cause unreasonable financial hardship to Grantee. The adequacy of such a showing shall be determined and weighed against the public interest in system expansion by the Council after a public hearing.

Section 240 - Receivership.

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV System, or upon the termination of any lease covering all or a substantial part of the CATV System, the Grantee shall notify the City Clerk 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 ordinance governing the consent of the Council to such change in control of the Grantee shall apply.

The Grantor shall have the right to revoke the franchise one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the 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 and twenty (120) days, or unless:

(a) Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the franchise and remedied all defaults thereunder; and

(b) Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the franchise.

Section 250 - Authority of City to Terminate in the Event of Condemnation.

In order to preserve the right of the City under the franchise provided for, and its right to acquire the property of the Grantee by purchase or by eminent domain proceedings at its then fair market value, at any time during the existence of the franchise, it is especially provided that if at any time the franchise or the property of the Grantee under the franchise shall become the subject of eminent domain proceedings by the City, the City reserves and shall have the right at the time such proceedings are commenced, or at any time thereafter, to terminate said franchise by resolution.

Section 260 - Continuity of Service Mandatory.

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the Grantor revokes or fails to renew the franchise, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of purchase by the Grantor, or a change of Grantee, the current Grantee shall cooperate with the Grantor to operate the system for a temporary period, in maintaining continuity of service to all subscribers.

Section 270 - Financial Disclosure of Independent Consultant.

Any individual, partnership or corporation employed by the City for the purposes of advising the City, its council,

commissions, city manager, or staff, on matters relating to cable television, or reviewing and evaluating, or assisting the City in reviewing and evaluating, proposals for the construction and operation of a cable television system(s), or regulating, or assisting the City in regulating, a cable television system, shall, as a term condition of their employment, file within ten (10) days of the date of employment with the City Clerk a statement containing:

(1) A listing and description of any financial and/or ownership held by the consultant in any cable television company, any subsidiary or affiliate of any cable television company, any company which is a supplier or customer of any cable television company, or in other company which owns stock or has any interest in any of those types of companies which are described in this section. If the consultant is a partnership, the financial and/or ownership interests in cable television companies affiliates, subsidiaries, suppliers, and customers of any partner must be disclosed. If the consultant is a corporation, the financial and/or ownership interests in cable television companies, affiliates, subsidiaries, suppliers, and customers of any shareholder, officer, or directors must be disclosed.

(2) A listing and description of any cable television company, affiliate, subsidiary, supplier, or customer which the consultant has represented, on a compensated or noncompensated basis, within the last fifteen (15) years.

The statement filed pursuant to this section shall be a public document open to inspection by any person. Failure to file this statement, or the inclusion of a material misrepresentation or omission within the statement, shall constitute grounds for the City's termination of the employment contract. This provision shall not apply to individuals who are subject to the reporting requirements of the "Political Reform Act of 1974" (California Government Code Sections 81008 et seq.) under the local Conflict of Interest Code if the disclosures required by the Code are substantially similar to those of this section.

#### Section 280 - Miscellaneous Provisions.

(a) A franchise granted to provide service within the City may authorize and permit the Grantee to solicit, sell, distribute, and make a charge to subscribers within

the City for connection to the cable television system of Grantee, and shall also authorize and permit the Grantee to traverse any portion of the City in order to provide service outside the City.

(b) A franchise, easement, license or other permit granted to anyone other than the Grantee to traverse any portion of the City in order to provide service outside the City shall not authorize nor permit said person to solicit, sell, distribute or make any charge to subscribers within the City nor to render any service or connect any subscriber within the City to the cable television service system of Grantee.

(c) No franchise granted under this ordinance shall ever be given any value by any Court or other authority, public or private, in any proceeding of any nature or character, wherein or whereby the City shall be a party or affected therein or thereby.

(d) Grantee shall be subject to all provisions of the other ordinances, rules, regulations, and specifications of the City heretofore or hereafter adopted, including, but not limited to, those pertaining to works and activities in, on, over, under, and about streets.

Any privilege claimed under any franchise granted pursuant to this ordinance in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

Grantee also shall be subject to the provisions of general laws of the State of California, or as hereafter amended, when applicable to the exercise of any privilege contained in any franchise granted under this ordinance, including, but not limited to, those pertaining to works and activities in and about State highways.

(e) Grantee shall be prohibited from directly or indirectly doing any of the following:

(i) engaging in the business of selling at retail, leasing, renting, repairing or servicing of television sets or radios.

(ii) imposing a fee or charge for any service or repair to subscriber-owned receiving devices except for the connection of its service or for the determination by Grantee of the quality of its signal to the recipients thereof.



(iii) soliciting, referring, or causing or permitting the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by Grantee.

(iv) providing information concerning the viewing patterns of identifiable individual subscribers to any person, group or organization for any purpose.

(f) If the Federal Communications Commission or the Public Utilities Commission of the State of California or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted under this ordinance, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City, the jurisdiction of the City shall cease and no longer exist.

(g) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.

(h) No person, firm or corporation within the service area of the Grantee, and where trunk lines are in place, shall be refused service; provided, however, that the Grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or service charge.

(i) Before providing cable television service to any subscriber, the Grantee shall provide a written notice to the subscriber substantially as follows:

"Subscriber is hereby notified that in providing cable television service the Grantee is making use of public rights-of-way within the City of Glendora and that the continued use of such rights-of-way is in no way guaranteed. In the event the continued use of such rights-of-way is denied to Grantee for any reason, Grantee will make every reasonable effort to provide service over alternate routes. By accepting cable television service, subscriber agrees he will make no claim nor undertake any action against the City of Glendora, its officers, or its employees if the service to be provided hereunder is interrupted or discontinued."

(j) The form of the Grantee's contract with the subscriber shall also be subject to approval of the City.

(k) Grantee may be required, at the option of the City, to purchase from the City any cable television system purchased through a negotiated sale or taken through eminent domain by the City at a price equal to the City's total cost, including attorneys' and appraisers' fees and other costs of negotiation and/or litigation. Grantee shall be required to operate said system as part of its systems, without interruption of service, subject to the terms and conditions of Grantee's franchise and this ordinance.

Section 290 - Equal Opportunity Employment and Affirmative Action Plan.

In the carrying out of the construction, maintenance and operation of the cable television system, the Grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin.

The Grantee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, up-grading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.

The Grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

The Grantee shall, in all solicitations, or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, sex, or national origin.

The Grantee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the cable television system, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

Section 300 - Violations.

(a) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.

(b) It shall be unlawful for any person, firm or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system within this City for the purpose of enabling himself or others to receive or use any television signal, radio signal, picture, program or sound, without payment to the owner of said system.

(c) It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(d) If a subscriber files in writing with the franchisor a complaint for a service problem which is preventable and reasonably within the franchisee's or licensee's control, and if such franchisee or licensee fails within a reasonable period following receipt of written notice by the franchisor to remedy the problem, the franchisor may levy a penalty of up to Five Hundred Dollars (\$500.00) for any occurrence or series of related occurrences, unless the franchisee or licensee has fewer than five thousand (5,000) subscribers, in which case the penalty shall not exceed Two Hundred Dollars (\$200.00). If the franchisee or licensee objects to the penalty in writing to the franchisor, the franchisee or licensee and franchisor shall conduct arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final.

The franchisee or licensee shall provide written notice to each subscriber at intervals of not more than one (1)

year, of the sanctions provided in this section and of the procedure for reporting and resolving subscriber complaints, including the subscriber's right to complain in writing to the franchisor of the franchisee's failure to resolve a service complaint which is preventable and reasonably within the franchisee's or licensee's control. The proper address of the franchisor or licensor to which complaints may be directed shall be included in such notice.

Section 310 - Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this ordinance and each section, sub-section, sentence, clause, and phrase hereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of any franchise granted hereunder.

Section 320 - Effective Date.


This Ordinance shall become effective thirty (30) days from and after its passage.

Section 330 - Repeal.

Any prior Ordinance concerning the subject matter of this Ordinance is hereby repealed in its entirety.

Section 340 - Publication.

The City Clerk of the City of Mendota shall certify to the adoption of this Ordinance and cause it to be published in accordance with law.

  
MAYOR

ATTEST:

J. LaRae Wright  
By: J. LaRae Wright, Deputy Clerk

I, City Clerk of the City of Mendota, do hereby certify that the foregoing Ordinance was duly read and introduced at a regular meeting of the City Council of Mendota, held on January 13, 1981, and was passed at a regular meeting of said Council on January 13, 1981, by the following vote:

AYES: Councilperson De La Cruz, Long, Lozano, and Mayor Capuchino

NOES: None

ABSTAIN: None

ABSENT: None

Dated: January 13, 1981

J. LaRae Wright  
PAUL OWHADI, City Clerk  
By, J. LaRae Wright,  
Deputy City Clerk

**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MENDOTA ADOPTING  
CHAPTERS 5.17 AND 13.17 OF THE MENDOTA  
MUNICIPAL CODE (CABLE VIDEO SERVICES  
AND FEES), AND REPEALING ORDINANCE No. 284**

**ORDINANCE NO. 16-01**

**WHEREAS**, the provision of cable services are critical services for many Mendota residents and the public at large; and

**WHEREAS**, the City of Mendota Municipal Code standards are intended to maintain public health, safety, and quality of life for the City's residents; and

**WHEREAS**, since approximately 1981, the City of Mendota has been a member of the Westside Cities Cable Television Authority (the "Authority"), which regulated and imposed conditions to the award of franchises operations for cable television systems within the member cities; and

**WHEREAS**, the City of Mendota subsequently adopted Ordinance 284: "An Ordinance of the City of Mendota Establishing a Procedure for the Granting of Franchises for Broadband and Two-Way Communication Systems" ("Ordinance No. 284"); and

**WHEREAS**, the Authority was recently dissolved due to local agencies no longer having the authority to negotiate or issue franchises, and the establishment of Digital Infrastructure and Video Competition Act of 2006 (the "DIVCA"), which provides the state the exclusive authority to issue franchises to video service providers; and

**WHEREAS**, the DIVCA provides that local entities, such as the City of Mendota, maintain the responsibility for administration and implementation of certain provisions of DIVCA; and

**WHEREAS**, the DIVCA allows for the City to establish, by ordinance, provisions for franchise fees; for Public, Educational and Governmental (PEG) channel fees; enforcement of customer service standards; and other regulations that are not in conflict with DIVCA or other state law; and

**WHEREAS**, the City Council desires to repeal Ordinance No. 284, and add provisions of the City's Code pertaining to cable franchising maintain consistency with the DIVCA; and

**WHEREAS**, the proposed Ordinance was introduced at the last regularly scheduled Council meeting on January 26, 2016, and a public hearing was duly noticed and held by the Council.

**NOW THEREFORE**, the City Council of the City of Mendota ordains as follows:

Section 1. Chapter 5.17 ADDED. Chapter 5.17 (Cable Television Franchise) is hereby added to Title 5 (Business Licenses and Regulations) of the Mendota Municipal Code and adopted to read as follows:

### **5.17 Cable Television Franchise**

#### **Sections:**

5.17.010	Intent.
5.17.020	Definitions.
5.17.030	Grant of Franchise
5.17.040	Regulation of Franchise
5.17.050	Design and Construction Requirements
5.17.060	Reports
5.17.070	System Evaluation
5.17.080	Franchise Breaches
5.17.090	Miscellaneous Provisions

#### **5.17.010- Intent.**

- A. The City of Mendota, pursuant to applicable Federal and State law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.
- B. The city council finds that the development of cable television and communications systems has the potential of having great benefit and impact upon the residents of Mendota. Because of the complex and rapidly changing technology associated with cable television, the city council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city may designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible cable television service to the public, and any franchises issued pursuant to this chapter shall be deemed to include this as an integral finding thereof.

#### **5.17.020- Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable television system" or "system," also referred to as "cable communications system" or "cable system," means a facility within the city 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 a community, but such term does not include:

- A. A facility that serves only to transmit television signals of one or more television broadcast stations;
- B. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public rights-of-way;
- C. A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
- D. Any facilities of any electric utility used solely for operating its electric utility system.

"Cable service" means the total of the following:

- A. The one-way transmission to subscribers of video programming or other programming service; and
- B. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

"Channel" or "cable channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system which is capable of delivering a television channel as defined by the Federal Communications Commission.

"Council" means the city council of the City of Mendota.

"Franchise" means an initial authorization, or renewal thereof, issued by the City Council, 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.

"Franchise agreement" means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

"Franchise fee" means any fee or assessment of any kind imposed by a franchising authority on a grantee as compensation for the grantee's use of the public rights-of-way. The term "franchise fee" does not include:

- A. Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
- B. Capital costs which are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;
- C. Requirements or charges incidental to the awarding, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- D. Any fee imposed under Title 17, United States Code.

"Grantee" means any "person" receiving a franchise pursuant to this chapter and under the granting franchise ordinance or agreement, and its lawful successor, transferee or assignee.

"Grantor" or "city" means the city of Mendota as represented by the Council or any delegate acting within the scope of its jurisdiction.



"Gross annual revenues" means the annual gross revenues received by a grantee from all sources of operations of the cable television system within the city utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such cable service, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct pass-through to local, state or federal government, other than the franchise fee, shall not be included.

"Initial service area" means the area of the city which will receive service initially, as set forth in any franchise agreement.

"Installation" means the connection of the system to subscribers' terminals, and the provision of service.

"Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities" means the total of the following:

- A. Channel capacity designated for noncommercial public, educational, or government use; and
- B. Facilities and equipment for the use of such channel capacity.

"Section" means any section, subsection or provision of this chapter.

"Service area" or "franchise area" means the entire geographic area within the city as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise granting ordinance or agreement.

"Service tier" means a category of cable service or other services provided by a grantee and for which a separate rate is charged by the grantee.

"State" means the state of California.

"Street" means each of the following, which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

"Subscriber" means any person who or which elects to subscribe to, for any purpose, a service provided by the grantee by means of or in connection with the cable system, and who pays the charges therefor.

#### **5.17.030- Grant of Franchise.**

- A. Grant. A franchise granted by the city under the provisions of this chapter shall encompass the following purposes:
  - 1. To engage in the business of providing cable television service, and such other services as may be permitted by law, which grantee chooses to provide, to subscribers within the designated service area.
  - 2. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.

3. To maintain and operate said franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services, and such other services as may be permitted by law.
  4. To set forth the obligations of a grantee under the franchise.
- B. Franchise Required. It shall be unlawful for any person to construct, install or operate a cable television system in the city within any public street without a properly granted franchise awarded pursuant to the provisions of this chapter.
  - C. Term of Franchise. A franchise granted hereunder shall be for a term established in the franchise agreement, commencing on the grantor's adoption of an ordinance or resolution authorizing the franchise.
  - D. Franchise Renewal. A franchise granted hereunder may be renewed upon application by the grantee pursuant to the provisions of applicable state and federal law and of this chapter.
  - E. Franchise Territory. Any franchise shall be valid within all the territorial limits of the city, and within any area added to the city during the term of the franchise, unless otherwise specified in the franchise granting ordinance or agreement.
  - F. Federal or State Jurisdiction. This chapter shall be construed in a manner consistent with all applicable federal and state laws, and shall apply to all franchises granted or renewed after the effective date of this chapter to the extent permitted by applicable law.
  - G. Franchise Non-Transferable.
    1. Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the council and then only upon such terms and conditions as may be prescribed by the council, which consent shall not be unreasonably denied or delayed; provided that such consent shall not be required for transactions between any parent, subsidiary or commonly owned entities. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the council shall be null and void. The granting of a security interest in any grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.
    2. The requirements of subsection (1) shall apply to any change of control of grantee. The word "control" as used herein is not limited to major stockholder or partnership interests, but includes actual working control in whatever manner exercised. The acquisition or accumulation by any person or group of persons holding forty percent (40%) of the voting shares or interests in grantee or any person which controls grantee shall be presumed to constitute a change of control of grantee, but grantee shall be entitled to rebut such presumption.
    3. Grantee shall notify grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee. Such notification shall be considered by grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of grantor to such change in control of ownership shall apply.
    4. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, grantor may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist grantor in such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have

the responsibility of insuring that the transferee completes any required application identical or substantially similar to FCC Form 394 "Application for Franchise Authority Consent to Assignment of Control of Cable Television Franchise", or any successor form. An application shall be submitted to grantor not less than sixty (60) days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If the legal, financial, character and technical qualifications of the applicant are satisfactory, the grantor shall consent to the transfer of the franchise. The consent of the grantor to such transfer shall not be unreasonably denied or delayed.

5. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable television system, in the event of a grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion, and during said period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.
6. At the time of application, grantee shall pay grantor an application fee to cover grantor's reasonable out-of-pocket processing and review expenses in connection with the transfer of the franchise or of control of the franchise, not to exceed one thousand five hundred dollars (\$1,500.00). Any such application fee shall not be charged against any franchise fee due to grantor during the term of the franchise.

#### H. Geographical Coverage.

1. Grantee shall design, construct and maintain the cable television system to have the capability to pass every dwelling unit within the public streets and rights-of-way in the city, subject to any service area and line extension requirements of the franchise agreement.
2. After service has been established by activating trunk and/or distribution cables for any service area, grantee shall provide service to any requesting subscriber within that service area within thirty (30) days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such thirty (30) day period on reasonable terms and conditions.

#### I. Nonexclusive Franchise.

Any franchise granted 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, as it deems appropriate, subject to applicable state and federal law, provided that if the grantor grants an additional franchise on terms more favorable to the second grantee (whether by the grant of greater benefits or the imposition of lesser obligations), then the initial grantee shall have the right to renegotiate its franchise to incorporate the more favorable terms.

J. Multiple Franchises.

1. Grantor may grant any number of franchises subject to applicable state or federal law. Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:
  - a. The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.
  - b. The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.
  - c. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.
2. Each grantee awarded a franchise to serve the entire city shall offer service to all residences in the city, in accordance with construction and service schedules mutually agreed upon between grantor and grantee, line extension policies, and applicable law.
3. Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two cable systems.
4. Grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

**5.17.040- Regulation of Franchise.**

- A. Franchise Application. Any person desiring an initial franchise for a cable television system shall file an application with the city. A reasonable nonrefundable application fee established by the city shall accompany the application to cover all costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the city within thirty (30) days following receipt of an itemized statement of such costs.
- B. Applications Contents. An application for an initial franchise for a cable television system shall contain, where applicable:
  1. A statement as to the proposed franchise and service area;
  2. A resume of prior history of the applicant, including the expertise of applicant in the cable television field;
  3. A list of the partners, general and limited, of the applicant, if a partnership, or of those owning or controlling over five percent of the stock, if a corporation;
  4. A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person;

5. The names and addresses of any parent or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;
  6. A current financial statement of the applicant verified by a certified public accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the city;
  7. A proposed construction and service schedule; and
  8. Any reasonable additional information that the city deems applicable.
- C. Consideration of Applications.
1. Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the City Council.
  2. A public hearing shall be set 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. The council may grant one or more franchises, or may decline to grant any franchise.
- D. Franchise Renewal. Franchise renewals shall be in accordance with applicable law. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. If mutually agreed to in a franchise renewal agreement, grantee shall reimburse grantor for costs incidental to the franchise renewal award, not to exceed any maximum specified in the agreement. Any such reimbursement shall not be charged against any franchise fee due to the grantor during the term of the franchise.
- E. Minimum Consumer Protection and Service Standards.
1. Except as otherwise provided in the franchise agreement, grantee shall maintain a local area office (not necessarily within the city limits) to provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operation:
    - a. Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday during normal business hours.
    - b. Sufficient toll-free telephone line capacity during normal business hours to assure, on average, that a minimum of ninety (90) percent of all calls, measured on a quarterly basis, will be answered within thirty (30) seconds, including wait time and time required to transfer the call; emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.
    - c. Under normal operating conditions, the customer will receive a busy signal less than three percent of the total time that the cable office is open for business.
    - d. If grantee utilizes an automated answering and distributing equipment, such equipment will limit the number of routine rings to four or fewer. If grantee does not utilize automated equipment, grantee shall make every effort to answer incoming calls as promptly as the automated systems.

- e. A local area bill payment location open during normal business hours nine a.m. to five p.m., Monday to Friday, excluding holidays and at least three weekend hours each week which is adequately staffed to accept subscriber payments.
- f. Consumer Information. At the time service is initiated, each new customer will be provided written information covering:
  - i. Products and cable service offered.
  - ii. Prices and options for programming services and conditions of subscription to programming and other cable service.
  - iii. Installation and service maintenance policies.
  - iv. Instructions on how to use the cable service.
  - v. A channel lineup card.
  - vi. The time allowed to pay outstanding bills.
  - vii. Grounds for termination of service.
  - viii. The steps grantee must take before terminating service.
  - ix. How the customer can resolve billing disputes.
  - x. The steps necessary to have service reconnected after involuntary termination.
  - xi. The fact that customers shall have the right to speak with a supervisor, and if none is available, the supervisor shall return the customer's call within one working day.
  - xii. The appropriate regulatory authority with whom to register a complaint and how to contact such authority.
- g. Requests for cable service and repairs.
  - i. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions exceeding four hours between midnight and six a.m. and exceeding one hour between six a.m. and midnight shall be preceded by notice over the cable system to customers in the affected area. To the extent that grantee can control them, scheduled interruptions shall occur during a period of minimum system use, preferably between midnight and six a.m.
  - ii. Grantee shall maintain a repair force of technicians capable of responding to subscriber requests for service within the following time frames under normal operating conditions no less than ninety-five (95) percent of the time measured on a quarterly basis:
    - (A) Installation. An installation staff capable of installing service to any residential subscriber within seven business days after receipt of a request, in all areas where coaxial feeder cable has been activated within one-hundred fifty (150) feet of the residence, provided that grantee is able to secure all rights-of-way necessary to extend service to such subscriber on reasonable terms and conditions within such seven-day period.

- (B) Outages. Grantee will respond to service interruptions promptly and in no event later than twenty-four (24) consecutive hours after becoming aware of such interruption. Other service problems will be responded to within thirty-six (36) consecutive hours during the normal work week.
  - (C) Inferior Reception Quality. Grantee will respond within thirty-six (36) consecutive hours during the normal work week of receiving a request for service identifying a problem concerning picture or sound quality.
- iii. Grantee shall schedule, within a specified four-hour time period, appointments with subscribers for installation or service. Specifying appointments as either "morning" or "afternoon" shall be deemed to comply with this requirement. The obligation of grantee to specify installation or service appointments within a designated four-hour time period shall be consistent with grantee's scheduling calendar, such that when available morning and afternoon appointments have been scheduled, additional subscribers requesting installation or service on such days may be advised that grantee's service personnel may arrive at any point during the business day, the subscriber may request grantee to make an appointment for morning or afternoon service on the next business day in which such appointments are available.
  - iv. Grantee shall be deemed to have responded to a request for service under provisions of this subsection when a service representative arrives at the service location and begins work on the problem. If an appointment was scheduled per subsection (g)(iii), or an appointment was not scheduled, and a subscriber is not home when a service representative arrives (within the appointment window if one was scheduled), response shall be deemed to have taken place if the representative leaves written notification of arrival.
  - v. The term "normal operating conditions" as used in this chapter means those service conditions which are within the control of grantee. Those conditions which are not within grantee's control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within grantee's control 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.

#### F. Complaint Procedures.

1. Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with grantor.
2. Grantor shall have the right to review grantee's response to subscriber complaints in order to determine grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

#### G. Continuity of Service.

1. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the grantor gives notice of intent to

terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

2. In the event of a change of control of grantee, or in the event a new operator acquires the system; the original grantee shall cooperate with the grantor, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system.
  3. Except as reasonably necessary for system maintenance, construction, rebuild, or upgrade activity, grantee shall not intentionally terminate the ongoing operation of the cable system so as to deny cable service to its subscribers. Because the provision of cable service to subscribers is a unique service, money damages would not be a sufficient remedy for violation of this subsection (G). Grantor shall be entitled to equitable relief, including injunctive relief and specific performance, as a remedy for violation of this subsection (G). Such remedy shall not be deemed to be the exclusive remedy, but shall be in addition to any other remedy provided for in this chapter or the franchise agreement or at law or in equity.
- H. Identification. All officers, agents or employees of grantee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto subscribers' premises shall carry a photo-identification card in a form reasonably approved by grantor. Grantee shall account for all identification cards at all times. Every vehicle of the grantee or its major subcontractors shall be clearly identified as working for grantee.
- I. Additional Service Standards. Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement, and grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that grantee shall receive due process, including written notification and an opportunity to cure, prior to any sanction being imposed.
- J. Franchise Fee.
1. Following the issuance and acceptance of the franchise, the grantee shall pay to the grantor a franchise fee in the amount set forth in the franchise agreement.
  2. The grantor, on an annual basis, shall be furnished a statement within sixty (60) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, grantor shall have the right to conduct an independent audit of grantee's records, in accordance with Generally Accepted Accounting Procedures, and if such audit indicates a franchise fee underpayment of two percent or more, grantee shall pay such underpayment to grantor within fifteen (15) calendar days and shall assume all reasonable costs of such an audit.
  3. Except as otherwise provided by law, no acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the grantee.



4. In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement, grantee shall pay as additional compensation:
  - a. An interest charge, computed from such due date, at an annual rate equal to the prime lending rate of First Interstate Bank or any other bank as adopted by resolution of the city council, plus one percent during the period for which payment was due; and
  - b. If the payment is late by forty-five (45) days or more, a sum of money equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.
5. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

K. Security Fund.

1. Grantor may require grantee to provide a security fund in an amount and form established in the franchise agreement or a guarantee by a corporate parent. The amount of any security fund shall be established based on the extent of the grantee's obligations under the terms of the franchise.
2. The security fund or guarantee shall be available to grantor to satisfy all claims, liens and/or fees due grantor from grantee which arise by reason of construction, operation, or maintenance of the system, and to satisfy any actual or liquidated damages arising out of a franchise breach, subject to the procedures and amounts designated in the franchise agreement.
3. If the security fund is drawn upon by grantor in accordance with the procedures established in this chapter and the franchise agreement, grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after each withdrawal by grantor. Failure to replenish the security fund shall be deemed a material breach of the franchise.

L. Hold Harmless. Grantee shall indemnify, defend and hold grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, and as provided in the franchise agreement.

M. Insurance. On or before commencement of franchise operations, the grantee shall obtain policies of liability, workers' compensation and property insurance from appropriately qualified insurance companies. The nature and extent of the grantee's minimum obligations shall be specified in the franchise agreement.

N. Records Required and Grantor's Right to Inspect.

1. Grantee shall at all times maintain:
  - a. A record of all service calls and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.
  - b. A full and complete set of plans, records and "as-built" maps showing the locations of the cable television system installed or in use in the city, exclusive of subscriber service drops and equipment provided in subscriber's homes.
  - c. If requested by grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a quarterly basis. A summary of

such service calls shall be submitted to the grantor within thirty (30) days following any grantor request, in a form reasonably acceptable to the grantor.

2. The grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the city's rights under this chapter or the grantee's franchise agreement.
3. Upon reasonable notice, and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor of all franchise property and facilities, together with any appurtenant property and facilities of grantee situated within or without the city, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under this chapter or the franchise agreement. Grantee shall have the right to be present at any such examination.

#### **5.17.050- Design and Construction Requirements.**

- A. Grantee shall not construct any cable system facilities until grantee has secured the necessary permits from grantor, or other cognizant public agencies.
- B. In those areas of the city where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.
- C. In those areas of the city where the grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement.
- D. Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under or over the streets, alleys and public ways shall be made under the direction of grantor's city engineer or a designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California Public Utilities Commission or other regulatory body having jurisdiction thereof.
  1. All transmission and distribution structures, lines and equipment erected by the grantee shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations.
  2. In the event that any property or improvement of the grantor in the public rights-of-way is disturbed or damaged by the grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the right granted to the grantee pursuant to this chapter, the grantee shall promptly, at the grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or

improvement which was so disturbed or damaged, and in the event that any such property or improvement shall at any later time become uneven, unsettled or otherwise require restoration, repair or replacement because of such disturbance or damage by the grantee, then the grantee, as soon as reasonably possible, shall, promptly upon receipt of notice from the grantor and at the grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Any such restoration by the grantee shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by grantor ordinance.

3. Prior to commencing any work in the public rights-of-way, the grantee shall obtain any and all permits lawfully required by such grantor codes and ordinances of general application for such work. In the event that emergency work may be required by the grantee, however, the grantee shall obtain any and all such permits within three working days after the beginning of such emergency work.
  4. There shall be no unreasonable or unnecessary obstruction of the public rights-of-way by the grantee in connection with any of the work herein provided for, and the grantee shall maintain such barriers, signs and warning signals during any such work performed on or about the public rights-of-way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.
  5. If at any time during the period of this franchise the grantor shall lawfully elect to alter or change the grade or location of any street, alley or other public rights-of-way, the grantee shall, upon reasonable notice by the grantor, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense, and in each instance comply with the requirements of the grantor.
  6. The grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all ordinances of the grantor.
  7. The grantee may be required by the grantor to permit joint use of its poles, conduits and appurtenances located in the streets, alleys or other public rights-of-way, by utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefore; provided that in the absence of agreement regarding such joint use, the city council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefrom, which award shall be final.
  8. The grantee shall, on request of any person holding a moving permit issued by the grantor, temporarily move its wires or fixtures to permit the moving of buildings, the expense of such temporary removal to be paid by the person requesting the same. The grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary changes, and may require payment in advance.
  9. The grantee shall have the authority, except when in conflict with existing grantor ordinances, to trim any trees upon and overhanging the streets, alleys, sidewalks and public places so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the grantor, such trimming may be done by grantor, or under grantor's supervision and direction.
- E. In new residential developments in which the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements.

1. The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire to provide cable television service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.
2. If one or two cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared cost basis. If fewer than two operators indicate interest, the developer shall provide conduit to accommodate two sets of cable television cables and dedicate to the city any initially unoccupied conduit. The developer shall be entitled to recover the costs of such initially unoccupied conduit in the event that grantor subsequently leases or sells occupancy or use rights to any grantee.
3. The developer shall provide at least ten (10) working days notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two working days to begin the installation of their cables, and five working days after beginning installation to complete installation.
4. The final development map shall not be approved until the developer submits evidence that:
  - a. It has notified each grantee that underground utility trenches are to be open as of an estimated date, and that each grantee will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and
  - b. It has received a written notification from each grantee that the grantee intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the grantee, or has received no reply from a grantee within ten (10) days after its notification to such grantee, in which case the grantee will be deemed to have waived its opportunity to install its facilities during the open trench period.
5. Sharing the joint utilities trench shall be subject to compliance with state regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the developer and participating operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.
6. Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs.
7. In the event that more than one franchise is awarded, the city reserves the right to limit the number of drop cables per residence, or to require that the drop cable(s) be utilized only by the cable operator selected by the resident to provide service.
8. The city reserves the right to grant an encroachment permit to a cable franchisee applicant to install conduit and/or cable in anticipation of the granting of a franchise. Such installations shall be at the applicant's risk, with no recourse against the city in the event the pending franchise application is not granted. The city may require an

applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost. The construction of such separate trench, if provided, shall be coordinated with, and subject to, the developer's overall construction schedule.

F. Technical Standards.

1. The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines. The written report shall be provided to grantor at the same time that grantee files the report with the FCC.
2. Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the franchise. For purposes of this paragraph (2), the term "repeated" shall mean failure to maintain any specified technical standard(s) three or more times in any consecutive twelve (12) month period where such failure causes a substantial adverse effect on the provision of cable service through grantee's cable system. Also for purposes of this paragraph (2), the term "verified" shall mean verified by the council or its designated representative.

**5.17.060- Reports.**

- A. Annual Reports. Within ninety (90) days after the end of the calendar year, unless grantor agrees that submission only upon request will be satisfactory, grantee shall submit a written annual report to grantor, with respect to the preceding calendar year in a form reasonably approved by grantor, including, but not limited to, the following information:
1. A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable system, including but not limited to, services begun or discontinued during the reporting year;
  2. A list of grantee's officers, members of its board of directors, and other principals of grantee;
  3. A list of stockholders of record or other equity investors holding ten (10) percent or more of the voting interest in grantee;
  4. An indication of any residences in grantee's service area where service is not available, and a schedule for providing service;
  5. Information as to the number of homes passed, subscribers, additional television outlets, and the number of basic and pay subscribers; and
  6. Any other information relevant to franchise regulation which the grantor shall reasonably request, and which is relevant to its regulatory responsibilities.
- B. Copies of Federal and State Communications.
1. Upon specific request, grantee shall submit to grantor copies of all pleadings, applications and reports submitted by grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state or local court or regulatory agency, which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Information otherwise confidential by law and so designated by grantee, which is submitted to grantor, shall be retained in confidence by

grantor and its authorized agents and shall not be made available for public inspection. In the event of legal challenge to grantor's withholding of any such information, grantee shall be responsible for defending against such challenge and shall indemnify grantor against any cost, expenses (including attorney's fees), losses, judgments or liabilities in connection therewith.

2. Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to grantor which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. To the extent possible, grantee will provide grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the grantor.
- C. Public Reports. If grantee is publicly held, a copy of each grantee's annual and other periodic reports and those of its parent, shall be submitted to grantor within forty-five (45) days of its issuance.
- D. Complaint Report and Opinion Survey. Upon request of the grantor, but not more than once annually, the grantee shall conduct a subscriber satisfaction survey pertaining to quality of service, which may be transmitted to subscribers in grantee's invoice for cable services. The results of such survey shall be provided to the grantor on a timely basis. The cost of such survey shall be borne by the grantee.
- E. Privacy Report. Upon grantor's request, but no more than annually, grantee shall submit to grantor a report indicating the degree of compliance with the provisions contained in this section herein and all steps taken to assure that the privacy rights of individuals have been protected.
- F. Reports—General.
1. All reports required under this chapter, except those required by law to be kept confidential, shall be available for public inspection in the grantor's offices during normal business hours.
  2. All reports and records required under this chapter shall be furnished at the sole expense of grantee, except as otherwise provided in this chapter or the franchise agreement.
  3. The willful refusal, failure, or neglect of grantee to file any of the reports required as and when due under this chapter, may be deemed a material breach of the franchise agreement if such reports are not provided to grantor within thirty (30) days after written request therefore, and may subject the grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.
  4. Any materially false or misleading statement or representation made knowingly and willfully by the grantee in any report required under this chapter or under the franchise agreement may be deemed a material breach of the franchise and may subject grantee to all remedies, legal or equitable, which are available to grantor under the franchise or otherwise.

#### **5.17.070- System Evaluation.**

- A. Annual Review of System Performance. Each year throughout the term of the franchise, if requested by the grantor, grantor and grantee shall meet publicly to review system performance and quality of service. The various reports required pursuant to this chapter, results of technical performance tests, the record of subscriber complaints and grantee's response to complaints, and the information acquired in any subscriber surveys, shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of a system performance review meeting, grantor may issue findings with respect to the cable system's franchise compliance and quality of service. If grantor determines that grantee is not in compliance with the requirements of this chapter or the grantee's franchise, grantor may direct grantee to correct the areas of noncompliance within a reasonable period of time. Failure of grantee, after due notice, to correct the areas of noncompliance within the period specified therefore or to commence compliance within such period and diligently achieve compliance thereafter, shall be considered a material breach of the franchise, and grantor may exercise any remedy within the scope of this chapter and the franchise agreement.
- B. Special Review of System Performance. When grantor determines that there has been a pattern of complaints made or where there exists other evidence which, in the judgment of the grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the grantor shall have the right to compel the grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable service. Grantor may not compel grantee to provide such tests or reports unless and until grantor has provided grantee with at least thirty (30) days notice of its intention to exercise its rights under this section and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the grantor no later than thirty (30) days after the grantor notifies the grantee that it is exercising such right, and shall be made at grantee's sole cost. Such report shall include the following information: The nature of the complaints which precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.
- C. Special Evaluation Sessions. The grantor may hold special evaluation sessions at any time during the term of a franchise, provided such sessions are held no more often than once every three years. The grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions may be open to the public and advertised in a newspaper of general circulation at least thirty (30) days before each session. The sessions may include an evaluation of any items considered relevant to the cable system, the subscribers and the city. Either the grantor or the grantee may propose items for discussion or evaluation.

#### **5.17.080- Franchise Breaches.**

Franchise breaches and the respective rights and remedies in connection therewith shall be as specified in the franchise agreement or as otherwise provided by law.

## **5.17.090- Miscellaneous Provisions.**

### **A. Abandonment or Removal of Franchise Property.**

1. In the event that the use of any property of grantee within the public rights-of-way is discontinued for a continuous period of twelve (12) months, grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as a backup for the system or a part thereof, shall not be deemed to have been abandoned because of its lack of use.
2. Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its former state at the time such facilities and equipment were removed, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.
3. Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor an instrument, satisfactory in form to the grantor, transferring to the grantor the ownership of the franchise property abandoned.
4. At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the city within a reasonable period of time, which shall not be less than one hundred eighty (180) days.
5. Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

- B. Restoration by Grantor—Reimbursement of Costs. In the event of a failure by grantee to complete any work required herein or by any other law or ordinance, and if such work is not completed within thirty (30) days after receipt of written notice thereof from grantor or, if more than thirty (30) days are reasonably required therefor, if grantee does not commence such work within such thirty (30) days period and diligently complete the work thereafter (except in cases of emergency constituting a threat to public health, safety or welfare), grantor may cause such work to be done and grantee shall reimburse grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs, or grantor may recover such costs through the security fund provided by grantee.



- C. Extended Operation and Continuity of Services. Upon expiration or revocation of the franchise, the grantor shall have the discretion to grant a short-term license in lieu of a franchise, to permit grantee to continue to operate the cable television system for a specific period of time, not to exceed twelve (12) months. Grantee shall continue to operate the system under the terms and conditions of this chapter and the license and to provide the regular subscriber service and any and all of the services that may be provided at that time. It shall be the right of all subscribers to continue to receive all available services provided that financial and other obligations to grantee are honored. The grantee shall use reasonable efforts to provide continuous, uninterrupted service to its subscribers, including operation of the system during transition periods following franchise expiration or termination.
- D. Receivership and Foreclosure.
1. A franchise granted hereunder shall, at the option of grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of grantee, whether in a 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) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the grantor; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.
  2. In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, grantor may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate thirty (30) days after service of such notice, unless: (1) grantor shall have approved the transfer of the franchise, as and in the manner that this chapter provides; and (2) such successful bidder shall have covenanted and agreed with grantor to assume and be bound by all terms and conditions of the franchise.
- E. Rights Reserved to Grantor.
1. In addition to any rights specifically reserved to the grantor by this chapter, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.
  2. The grantor shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the grantor determines: (1) that it is in the public interest to do so; and (2) that the enforcement of such provision will impose an undue hardship on the grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the grantor. Waiver of any provision in 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 the franchise unless the statement so recites.

F. Rights of Individuals.

1. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, sex or sexual orientation. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations relating to nondiscrimination.
2. Grantee shall adhere to the applicable equal employment opportunity requirements of federal, state and local regulations, as now written or as amended from time to time.
3. Neither grantee, nor any person, agency, or entity shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine maintenance of the system, detection or investigation of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.
4. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.
5. No cable line, wire amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.
6. The grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party without consent of the subscriber pursuant to state and federal privacy laws:
  - a. Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and
  - b. Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.

- G. Separability. If any provision of this chapter is held by any court or by any federal or state agency of competent jurisdiction, to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on grantor and grantee, provided that grantor shall give grantee thirty (30) days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for grantee to comply with such provision.

- H. Notices. Grantee shall maintain throughout the term of the franchise, a local address for service of notices by mail.
- I. Captions. The captions to sections throughout this chapter are intended solely to facilitate reading and reference. Such captions shall not affect the meaning or interpretation of this chapter.
- J. No Recourse Against the Grantor. The grantee shall have no recourse whatsoever against the grantor or its officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damage arising out of any provision of the franchise or because of the enforcement of the franchise.
- K. Non-enforcement by the Grantor. The grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the grantor to enforce prompt compliance.

Section 2. Chapter 13.17 ADDED. Chapter 13.17 (Cable Video Services and Fees) is hereby added to Title 13 (Public Services) of the Mendota Municipal Code and adopted to read as follows:

#### **13.17.010- Purpose of Authority**

Under State law effective January 1, 2007, the California Public Utilities Commission (PUC) has the sole authority to grant State franchises to provide video service. Pursuant to this State law, the City has certain rights and responsibilities with respect to state franchise holders, which include the receipt of a franchise fee and a fee for public, educational and government (PEG) purposes, and the authority to establish and enforce penalties for violations of customer service rules. The City retains authority to regulate the City's current cable franchise in accordance with this chapter and the cable franchise currently in effect until such time as the cable franchisee no longer holds a City franchise or is no longer operating under a current or expired City franchise.

#### **13.17.020- Definitions**

For the purposes of this Article, the following words shall have the following meanings:

"Gross revenue" shall have the meaning ascribed that term in Section 5860 of the California Public Utilities Code.

"Holders" shall have the meaning ascribed that term in Section 5830 of the California Public Utilities Code.

"State franchise" shall have the meaning ascribed that term in Section 5830 of the California Public Utilities Code.

"Video service" shall have the meaning ascribed that term in Section 5830 of the California Public Utilities Code.

#### **13.17.030- Franchise Fee**

For any State franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to five percent (5%) of the gross revenue of the State franchise holder.

### **13.17.040- PEG Fee**

For any State franchise holder operating within the boundaries of the City, there shall be a fee paid to the City equal to one percent (1%) of the gross revenue of that state franchise holder, which fee shall be used by the City for PEG purposes consistent with State and Federal law.

### **13.17.050- Audit Authority**

Not more than once annually, the City Manager or his or her designee may examine and perform an audit of the business records of a State franchise holder to ensure compliance with Sections 13.17.030 and 13.17.04 of this Chapter 13.17.

### **13.17.060- Customer Services Penalties under State Franchises**

(A) Applicable Law. Any State franchise holder shall comply with all applicable State and Federal customer service and protection standards pertaining to the provision of video service.

(B) Penalties for Violation. The City Manager or his or her designee shall monitor the compliance of the State franchise holders with respect to State and Federal customer service and protection standards. The City Manager shall provide the State franchise holders written notice of any material breaches of applicable customer service standards, and will allow the State franchise holder thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty (30) day time period will be subject to the following penalties to be imposed by the City:

1. For the first occurrence of violation, a fine of Five Hundred Dollars (\$500.00) shall be imposed for each day the violation remains in effect, not to exceed One Thousand Five Hundred Dollars (\$1,500.00) for each violation.
2. For each violation of the same nature within twelve (12) months, a fine of One Thousand Dollars (\$1,000.00) shall be imposed for each day the violation remains in effect, not to exceed Three Thousand Dollars (\$3,000.00) for each violation.
3. For a third or further violation of the same nature within twelve (12) months, a fine of Two Thousand Five Hundred Dollars (\$2,500.00) shall be imposed for each day the violation remains in effect, not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for each violation.

(C) Appeal Procedure. A State franchise holder may appeal a penalty assessed by the City Manager to the City Council within thirty (30) days of the assessment. The City Council shall hear all evidence and relevant testimony and may uphold, modify, or vacate the penalty. The City Council's decision regarding the imposition of a penalty pursuant to this section shall be final. In the absence of any appeal, the imposition of the penalty shall be deemed final thirty (30) days after the assessment.

### **13.17.070- City Response to State Franchise Applications**

(A) Applicants for the State franchises within boundaries of the City must concurrently provide copies to the City of any application or amendments to applications filed with the California Public Utilities Commissioner (PUC). One complete copy must be provided to the City Manager.

(B) Within thirty (30) days of receipt, the City Manager will provide appropriate comments to the PUC regarding an application or an amendment to an application for a State franchise.

**13.17.080- City Response to State Franchise Applications**

- (A) Applicants for State franchises within the boundaries of the City must concurrently provide copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Manager.
- (B) Within thirty (30) days of receipt, the City Manager will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State franchise.

**13.17.090- PEG Channel Capacity and Interconnectivity**

State franchises shall provide the PEG channels required by California Public Utilities Code Section 5870 and satisfy the interconnectivity provisions of that section.

Section 3. Ordinance 284 REPEALED. The City of Mendota's Ordinance 284: "An Ordinance of the City of Mendota Establishing a Procedure for the Granting of Franchises for Broadband and Two-Way Communication Systems," is repealed upon the effective date of this Ordinance.

Section 4. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Mendota City Council hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 5. Within fifteen (15) days of the adoption of this Ordinance, a summary thereof, including the names of the City Council Members voting for and against it, shall be prepared by the City Attorney for publication in the *Firebaugh-Mendota Journal*, and a certified copy of the Ordinance shall be posted in the office of the City Clerk.

Section 6. This ordinance shall become effective and in full force at 12:00 midnight on the 31<sup>st</sup> day following its adoption.

\* \* \* \* \*

The foregoing ordinance was introduced on the 26<sup>th</sup> day of January, 2016 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 9<sup>th</sup> day of February, 2016 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

\_\_\_\_\_  
Robert Silva, Mayor

ATTEST:

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Matt Flood, City Clerk

APPROVED AS TO FORM:

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John Kinsey, City Attorney

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## **PUBLIC WORKS REPORT**

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**TO:** HONORABLE MAYOR AND COUNCILMEMBERS  
**FROM:** CRISTIAN GONZALEZ, PUBLIC WORKS DIRECTOR  
**VIA:** VINCE DIMAGGIO, CITY MANAGER  
**SUBJECT:** PUBLIC WORKS MONTHLY REPORT  
**DATE:** JANUARY 26, 2016

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### **STREETS AND ROADS**

- The City's street sweeper is back in operation and continues to operate on its normal schedule, Mondays, Wednesdays and Fridays. When significant rain prohibits street sweeping activities on sweeping days, the street sweeper will sweep the skipped route the following day, assuming the weather allows.
- Construction on Quince Street between 8th to 10th Streets is now complete. New pavement and striping was installed.
- Holiday decorations were removed following the New Year's weekend.
- ATP (Active Transportation Plan) project is underway. New sidewalk on Perez Street and a median at the intersection of Bass and Second Streets, along with a new cross walk system will be installed as part of this project. Work was temporarily delayed due to the wet weather.
- The LED street and park light retrofit is set underway. Approximately 160 fixtures, including 7th Street fixtures have been replaced with brighter efficient fixtures. The project includes more than 600 fixtures within the City streets and parks all to be completed by the end of March.

### **PARKS AND PUBLIC BUILDINGS**

- Public Works continues to maintain the parks and restrooms. The turf at the parks and government building are not being irrigated during this wet winter season.
- Crews continue to excavate the playground area when weather and time permits. Excavation of at least 14" is required in order to backfill with a layer of sand and then engineered wood chips.

### **ANIMAL CONTROL**

- Animals impounded: 15
- Animals euthanized: 14
- Animals redeemed by owner: 1
- Graffiti abated: 2
- Citations issued: 1

### **BUILDING PERMITS ISSUED**

- 685 Juanita (Solar), 466 Pucheu (Fence), 231 Black (Solar), 201 Santa Cruz (Solar), 624 DeLaCruz (Solar addendum), 779 Unida (Solar), 630 DeLaCruz (Solar), 627 Peach (Solar), 604 J (Solar), 310 Black (Solar), 560 Divisadero (Fire restoration), 791 Oller (Plumbing), 1990 9th (HVAC), 1867 7th (Electrical), 904 Marie (Electrical), 668 Sorensen (Solar), 949 Pucheu (Solar), 183 Elm (Solar), 261 Pucheu (Solar), 625 DeLaCruz (Solar), 307 Divisadero (Solar), 659 Peach (Solar), 639 Garcia (Solar), 157 Petry (SFR), 428 Martinez (SFD), 165 Petry (SFD), 346 Martinez (SFD), 141 Petry (SFD), 149 Petry (SFD), 405 Martinez (SFD), 348 Silva (SFD), 173 Petry (SFD), 401 Silva (SFD), 411 Silva (SFD), 421 Silva (SFD), 429 Silva (SFD), 404 Martinez (SFD), 330 Black (Electrical), 750 Derrick (Electrical), 617 Lozano (Solar), 665 I (Solar)

SFD= Single Family Dwelling -----HVAC= Heating Ventilation & Air Conditioning

### **ADULT OFFENDER WORK PROGRAM**

- AOWP working on flood preparation, public right of way and alleys.

### **STAFFING FOR PUBLIC WORKS**

- 6 full time employees
- 4 part time employees
- 5 full time/part time (Proteus)

### **STAFFING FOR PUBLIC UTILITIES**

- 6 full time employees
- 5 full time/part time (Proteus)

### **FUEL STOCK**

- Unleaded: 6,707 gallons
- Diesel: 4,504 gallons