

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting

January 28, 1963

2:45 P. M.

Council Chamber, City Hall

The meeting was called to order with Mayor Palmer presiding.

Roll call:

Present: Councilmen Perry, Shanks, White, Mayor Palmer

Absent: Councilman Armstrong

Present also: W. T. Williams, Jr., City Manager; Doren R. Eskew, City Attorney

The Mayor announced this was a called meeting for the purpose of further considering cable television at the request of Independent Cable Television of Austin, Inc.; for the purpose of considering award of contracts for cable television service to Capital Cable Company, and to qualified applicants; for the purpose of authorizing the City Manager to execute a contract with Sinclair Pipeline Company for relocating utilities on Highway 183; and authorizing the City Manager to approve the selection by Hartford Steam Boiler Inspection and Insurance Company of contractors to repair damage from explosion of Boiler No. 9 at the Seaholm Plant.

MR. TRUEMAN O'QUINN, representing INDEPENDENT CABLE TELEVISION OF AUSTIN, INC., read a prepared statement, as follows:

"STATEMENT OF  
INDEPENDENT CABLE TELEVISION OF AUSTIN, INC.

"The City Council called a meeting for December 13, 1962, to determine whether there was a need and demand for additional television viewing service in Austin. At the conclusion of the meeting, the Council declared that there was a public need and demand for such service and called for those companies interested in providing such service to file applications with the City Council on January 3, 1963.

"Five applications were filed simultaneously in response to the request of the City Council with one application being for a permit to install home movies.

"At the conclusion of the meeting on January 3, the City Council stated

that a decision would be rendered as soon as possible. On January 24, the Council met and passed a 21-point Resolution and requested any applicant desirous of operating under conditions set forth in the Resolution to re-apply for a contract with the City.

"At this meeting, representatives of our company requested the Council to defer action on the Resolution until all applicants could have time to study all parts of the Resolution. This was denied and the Resolution was passed.

"Immediately upon adoption of the Resolution (apparently without study), Capital Cable Company made application under the Resolution. Capital Cable Company had stated in its application filed on January 3 that they already had signed a pole line agreement with the Southwestern Bell Telephone Company. There is a question of space on poles which governs whether the Telephone Company can accommodate other attachments. Capital Cable Company, having this contract subject to receiving a contract with the City, could very well be the only company that the Telephone Company would be able to accommodate on its poles and thus the only company that could provide city-wide service of a cable system in Austin.

"In paragraph 19 of the standard contract offered by Southwestern Bell Telephone Company, it is stated:

"Nothing herein contained shall be construed as affecting the rights or privileges previously granted by Licensor, by contract or otherwise, to others not parties to this Agreement, to use any poles covered by this agreement; and Licensor retains the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements."

"If the City grants a contract to Capital Cable Company prior to getting a statement from the Telephone Company that space will be provided for all applicants under the same conditions, rates, and costs, the City Council probably is giving Capital Cable Company the sole right to provide cable television service to the people of Austin.

"There are other conditions in the Resolution which are not in the best interests of the public and for the operation of a successful television cable service in Austin. The limited time allowed us on this occasion to discuss the Resolution with the City Council will not permit further elaboration on these points. If the Council will delay execution of any contract under the Resolution we will be glad to discuss these additional points with the Council at another hearing.

"We respectfully request the City Council not to make any contracts for cable television service until the Southwestern Bell Telephone Company has had an opportunity to file with the City Council a declaration of its policy in regard to making contracts for the use of its poles for cable television services.

"INDEPENDENT CABLE TELEVISION  
OF AUSTIN, INC.

RICHARD F. BROWN  
TRUEMAN O'QUINN  
R. T. SONNY DAVIS  
GLENN FLINN"

MR. O'QUINN read a Resolution he prepared, as follows:

"BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

"Since Capital Cable Company has stated in its application that, through Midwest Video Corporation, Capital Cable Company already has a contract with Southwestern Bell Telephone Company for the use of its poles, and that such a contract is necessary in order to construct any proposed city-wide cable television system; and since the City Council, in establishing a policy with respect to rendition of cable type television signal distribution service, proposes in the public interest to insure equal opportunity and protection for all cable television companies in the use of poles of Southwestern Bell Telephone Company, the City Council hereby directs that no contract for cable television shall be executed by the City of Austin until the Southwestern Bell Telephone Company has filed with the City Council in writing a verified statement containing the following:

"(1) An unqualified representation that the Telephone Company is now legally free and technically able to enter into contract identical with the Capital Cable Company contract to provide equal space on each of its poles with at least five cable television companies, and that the Telephone Company will keep itself free legally and able technically to make such contracts for the 20-year period of any cable contract made pursuant to this Resolution.

"(2) An unqualified representation that the Telephone Company will permit the use of its poles and other facilities in every part of the City of Austin by not less than five such cable television companies at all times under equal and non-discriminatory agreements in every respect including priorities, rentals, charges for changes and modifications of lines, erection of new poles and facilities, and in every phase of using telephone poles and facilities for cable television."

MR. GAYLOR KENDALL, representing VUMORE COMPANY, asked the Council to take under advisement and refrain from entering into any contract until it had a chance to look at all the cards laid on the table in this matter. He said he understood a form contract was being prepared relating to implementing the Council's decision to permit more than one company to have a franchise in Austin. Mr. Kendall stated as far as his company was concerned, there was a question of whether or not they wanted to enter into such a contract. He said he did not believe this type of contract would be in the best interest of the City, even though he was in favor of free competition. He pointed out the difference in cases of bus companies, gas franchises, etc. He suggested the Council's setting specifications on which the contract would be let and then selecting the company to furnish the service. In this case, there are different quality pictures. He asked if the Council wanted them to bid on quality picture television, or on a big channel master picture. As to the policy established by the Council, Mr. Kendall asked the Council to inquire of the officials of Tallahassee, Florida, about the problems which they are wrestling and which were created by the same type of policy the Council had adopted.

MR. LLOYD CALHOUN introduced MR. FRANK VALENTINE, Attorney for the MICO CORPORATION. Mr. Valentine filed a mimeographed statement commenting on each of the 21 points set up in the Council's Resolution, and filed a conclusion of the statement. (On file under TELEVISION) Mr. Valentine stated it was his belief there would be only one cable company permitted to tie on to the telephone poles; he objected to the requirement that the cable operator interrupt television signals, and inquired of the interpretation as to advertising. The City Manager stated the Resolution did not require one to cut anyone off, but that the company have the equipment, personnel, and capabilities to do so, and he read Paragraph 6 of the Resolution concerning this; also Paragraph 5 regarding the advertising. Mr. Valentine stated his company, as an applicant, did not propose to interrupt any television signals being picked up off the air and transmitted; that no one else was being required to do anything like that, referring to the radio and newspaper. He stated he had never run across any type of resolution as presented to him as this presented by this Council, and he said the Council should not grant any contract or franchise to any cable operator until the Council had a chance to study the rules it had set out in its 21 points. Mr. Valentine objected to the Council's setting the rate after three years, and that it had not mentioned how it would determine the fair rate of return. He inquired about the provision that the cable operator had to cut off a signal if the local television station requested that they do so. The City Manager referred to Paragraph 3, stating he could not be compelled to carry it if the local television stations did not want him to. Discussion in connection with this were copy right and royalty rights. Mr. Valentine stated his company wanted the right to carry any signal whether the broadcaster wanted them to or not. Mr. Valentine, after much discussion, asked that the Council take no action on any application pending until it set out in detail what the fair rate of return would be, and until a clarification on the pole line contract with the Bell Telephone Company is obtained.

MR. EDDIE JOSEPH did not want his application for home movies jeopardized, and stated under the present plan unless Southwestern Bell Telephone Company makes different arrangements about the use of their poles, his permit would be in jeopardy. He requested that the permit given for cable television be confined strictly to that portion of it, and that no motion pictures be transmitted over the cable antenna, and reserve that for pay television or home electronics. He just asked that applicants be prohibited from using motion pictures on their cable systems. The Mayor stated it was suggested that a licensing agreement be set up.

MR. DEASON, KVET, stated he had tentative approval for Channel 24, and he suggested that all who were granted franchises be required to carry all television signals originating in Travis County.

An interested citizen stated the F.C.C. had a rule that television stations or communication systems within the same channel area could not compete with each other with interlocking board of directors. Because of that ruling, he stated the City Council should establish as a policy, in the best public interest, that the competition of free enterprise seeking to serve the people with cable television shall be by the Council's taking of bids and proposals for such cable service contracts, and not in the rendition of service itself, except insofar as such cable services may compete with existing television broadcasting stations operating in Austin; and that no contract for cable television systems should be granted to any person or company if such a person or Company directly or indirectly owns, operates, or controls the television or broadcasting station

in Austin. In applying the restriction, the Council should be guided by the multiple ownership rule of the F.C.C. in this situation of considering competing applications for television channels for the same area and in such rule as has been construed and approved by the Federal courts. The Mayor stated this is entirely different, but the way the Council has approached this would accomplish exactly what he had suggested -- that there would be competition within the cable television field. The Citizen stated the television station presently operating can buy into the company contracting now, and ownership would be interlocking there and would not be in the best interests of the public and that it would get the best reception.

MR. WILLIAM B. GARDNER, JR., inquired if the Council had the legal power or right to award a contract with any cable television company that would affect the rights of property owners of a third party without their prior knowledge or consent, stating the awarding of a contract would entail that the person would have to use utility poles for the purpose of putting up the cable, and that the Council should be a little reluctant in moving along in the area of committing the telephone company poles to some use that had not been intended for in the first place. He stated if the Council had not received a prior knowledge or consent from the Telephone Company, there would be a doubt if the Council could award any contract to any company without first securing the Telephone Company's permission. The Mayor read a paragraph from one of the proposals, "Austin Telephone officials have assured this Company that the Telephone Company is free to contract with any Cable Television Group with which the City may contract." Mr. O'Quinn said this paragraph was from his application; and the assurance he had when the matter came up was the assurance when MR. TOM BROWN of the Telephone Company said it was not exclusive, if the Council entered into a contract with anybody else other than the Capital Cable Company or any body, they would be able to make a contract with them. General discussion by Mr. O'Quinn, Mr. Gardner, and others was held.

MR. FRANK DENIUS representing Capital Cable Company, thanked the Council for the opportunity to be heard and stated it had been most fair in giving everyone time. He stated Capital Cable Company filed an application in 1957, long before any of these gentlemen even thought about an application except Mr. Joseph. He stated his client was ready and able to proceed on the 21 points set out by the Council on January 24th. He said MR. J. M. HARRIS was President, and he was Secretary, and the Company wants to offer the best additional television service from now on. He said they now asked to sign a contract to embody this 21 point program.

MR. EDDIE JOSEPH wanted to reiterate that he wanted equal opportunity with Mr. Denius' company for equal rates for cable on the telephone lines. He stated although Mr. Brown said it was open for the others it does not seem to be the case as it would require an additional expense to any body else and would restrict them from doing business if they had to renegotiate with the telephone company at an additional cost for erecting additional poles for that space on the line which will be required for movie, TV or any other system that the Council might grant. He asked the Council to consider, before any action is taken, that the rate promulgated would be the same rate as the telephone company would give to all users of the telephone system, and that the one rate should not be \$3 a pole for the first company and for the others an additional charge of \$100 for the erection of a new pole.

The Mayor referred to Item No. 14 where the responsibility for right of way easements, permission, etc. is specifically spelled out. Discussion of poles, additional poles, charges, and possible lack of space on the poles was held.

MR. VALENTINE stated basically most all franchises are non exclusive and five people could come in, sign up a contract with the City of Austin and chances are that some of them would not be able to perform because they would not be able to raise the money to do it. He said as far as MICO is concerned it is--it has the money, is capable of performing, wants to bring 8 channels of television to the people of Austin, and it is willing to risk that money to bring this.

MR. FRED CLATT, law student, suggested that the Council submit to the vote of the people the question of awarding this contract through competitive bidding or throwing it wide open to all. He stated it looked as though some of the other companies are not being given a complete opportunity to go into this matter enough to decide whether or not they want to compete and whether or not they would be able to get telephone lines, etc. Councilman Perry stated the Council was here to hear from the people, and spent a lot of time talking personally, and reading letters; and he believed the Council was in a position as well as anyone else in the City to know what the people want, and he stated he sincerely believed in this case they were interested only in one thing, and that is additional television viewing facilities, and were not interested in how, where or from whom they were obtained. Mr. Clatt stated if it could not be possible for a vote, that the Council not accept a contract immediately until some of the other people had a chance to see whether anyone who has a contract could use the telephone poles, as it had not been made clear if the Telephone Company would allow the third or fourth company to use them. Councilman Shanks stated this Council had been considering this for weeks. The City Attorney asked for a showing of hands from those who were familiar with the Resolution adopted last week, as a lot of points were covered. Less than half the crowd indicated they were familiar with the provisions of the Resolution. The City Manager then read the Resolution setting out the 21 provisions.

An interested citizen suggested until this question had been definitely resolved with an answer from the phone company directly to the Council or to the applicants, that the Council delay signing any contract until that question had been resolved.

MR. O'QUINN said the assurance he had from the Telephone Company was that if his company was the successful bidder that the fact that the Capital Cable had the contract would not prevent the Telephone Company from making a contract with his company. The Telephone Company did not assure him that if this thing were wide open and his company had to be second, third or fourth, that they could either make a contract with his company or if it made a contract that they would give it a permit to get on their poles. They would just tell his company they did not have room. That is the situation confronting him.

MR. FRANK ERWIN stated he was not employed by any of the companies interested in this cable installation in this meeting or any other, but he did feel some of the suggestions that had been made either deliberately or accidentally were unworthy of comment in this Chamber. He said he had recently felt the pressure of the Council when they accepted bids and negotiated on a gas contract that involved a lot more money than is involved in this cable television; and that Mr. Denius and he were on opposite sides. He did not think there was a harder fought contest. In that instance, the Council took bids, and he thought he had the best bid, and Mr. Denius thought he had, and the Council played one against the other until \$18 million was cut off from the successful bid. Mr. Erwin stated his side

lost \$18 million, but the people of Austin won the \$18 million. He said he had been before the Council as much as anyone in the City, and he had lost as many cases as he had won; but in each case, he had always found that the Council was motivated by nothing but the interest of the people of the City of Austin, and he wanted to say he knew he spoke for the great majority of the people in being grateful for the effort the Council put forward. He thanked the Council for its efforts in this matter as in all other matters, stating whatever it did, it would be done only from a desire to get the best. MAYOR PALMER thanked Mr. Erwin stating the Council was sincerely trying to do exactly what he had just said.

MR. WALTER TIMBERLAKE asked who would be the one to install the cable; and if the City would be hired to do it for a \$3.00 fee or the Telephone Company. The Mayor stated as far as he knew it would be the applicant or who ever has the contract. Mr. Timberlake was interested in people in Austin being employed to string this cable rather than out of town people. The Mayor stated it was hoped the companies would utilize the local labor to the greatest extent possible.

MR. LLOYD CALHOUN stated the exceptions presented would not be found in any instance to be at variance with their proposal of January 3rd. He stated his proposal would not coincide with the 21 point program and neither would their exceptions.

The Mayor stated this session would now be closed if no one else was to be heard; and the other hearing which had been scheduled, would be opened.

MR. FRANK DENIUS, representing CAPITAL CABLE COMPANY, said after the Resolution was adopted by the Council last Thursday, he contacted his clients, who had filed an application in 1957, and they were ready to submit to a contract which embodies the 21 points. The City Attorney reported he had prepared blank copies of a contract embodying the 21 provisions adopted.

MR. DENIUS submitted the following certificate:

"THE STATE OF TEXAS    I

COUNTY OF TRAVIS    I

"That I, Franklin W. Denius, Assistant Secretary of Capital Cable Company, a Texas corporation, do hereby certify that the following is a true and correct copy of the resolution adopted by this corporation at a meeting of its Board of Directors held on Friday, January 25, 1963:

"RESOLVED that J. M. Harris, President, and Franklin W. Denius, Assistant Secretary, be and they are hereby authorized to enter into a contract with the City of Austin whereby this corporation is granted the privilege of installing a cable antenna television system for the City of Austin, Texas, pursuant to the policy requirements contained in the twenty-one point resolution adopted by the City Council of the City of Austin on the 24th day of January, 1963.

s/ Franklin W. Denius  
Franklin W. Denius

"SUBSCRIBED AND SWORN TO BEFORE ME by the said FRANKLIN W. DENIUS, on

this the 28th day of January, 1963, to certify which witness my hand and seal of office.

s/ Joyce L. Reynolds  
Notary Public in and for  
Travis County, T e x a s"

COUNCILMAN PERRY asked the City Manager if he had any recommendations concerning this contract. The City Manager stated the contract complied with the policies adopted by the Council, and contained some additional provisions that were not specifically enumerated in the policy but which would provide further protection of the City, and he recommended this contract.

Councilman Shanks moved that the City Manager be authorized to execute the contract on behalf of the City. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer  
Noes: None  
Absent: Councilman Armstrong

Councilman Shanks offered the following resolution and moved its adoption:

(RESOLUTION)

WHEREAS, after public hearings the City Council found it to be in the public interest to establish a policy under which cable type television signal distribution service could be rendered in the City of Austin; and,

WHEREAS, the City Council has established minimum requirements for contracts between the City of Austin and distributors of cable type television signal distribution service; and,

WHEREAS, Capital Cable Company, a Texas corporation, formerly applied for such a contract; and,

WHEREAS, the City Council has found that said applicant meets the minimum requirements prescribed by the policy of the Council established January 24, 1963, and that the public interest of the people of Austin will be served by executing a contract with said Capital Cable Company; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That W. T. Williams, Jr., City Manager, be and he is hereby authorized and directed to execute a standard form of contract being in the form as shown in "Exhibit I" which is attached to this Resolution with Capital Cable Company.

"Exhibit I"

THE STATE OF TEXAS

COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

This CONTRACT AND AGREEMENT made and entered into by and between the City



of Austin, a municipal corporation, situated in Travis County, Texas, hereinafter for convenience called "CITY" and \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, with its principal office and place of business in \_\_\_\_\_, \_\_\_\_\_ hereinafter for convenience called "COMPANY".

WITNESSETH:

For the consideration hereinafter recited and the covenants and conditions to be kept and performed by Company, the City hereby grants to Company the authority, right and privilege to operate and maintain a city-wide cable type television signal distribution service for the distribution of audio, video, and radio signals for which no charge to the receiver is made other than the service fees authorized herein, subject to the following terms and provisions.

1.

Definitions

For the purposes of this Contract, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, 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. The word "shall" is always mandatory and not merely directory.

(1) "City" is the City of Austin, a municipal corporation located in the County of Travis, State of Texas.

(2) "Company" is the grantee of rights under this Contract.

(3) "Council" is the City Council of the City of Austin.

(4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(5) "Contract Year" is a period of one year, the first day of which is the date of the month when this contract was executed by City.

2.

Grant of Authority

(1) City hereby grants to Company the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under its streets, alleys, public ways, places, easements, and properties, the Company's cables, lines, necessary wiring, towers, poles, underground conduits, manholes, electronic conductors, and other fixtures necessary for the maintenance and operation of a cable type television signal distribution system and service, to the extent that the City may lawfully permit the use of the above-described properties for the purposes enumerated.

(2) A. City also grants to Company authority to use certain City-owned electrical poles in the City of Austin, Texas, and the City's service area for the purposes herein described. Such attachments are to be made in accordance with City's electric distribution standards for communication lines now in effect

or which may be hereafter made effective.

B. This agreement shall be effective as to all territory served by the City of Austin Electrical Distribution System.

C. Before making any attachments, Company must first make application to City for a permit in the form of Exhibit "A", attached hereto and made a part hereof, and shall make no such attachments unless and until City issues a permit therefor.

D. In the event it is necessary to make changes in or to add to City's facilities for the purpose of allowing Company to make attachments, City will advise Company, on Company's written request, of the terms and conditions upon which permission will be granted for making said attachments.

E. If Company desires to remove or abandon any attachment or attachments, notice of such removal or abandonment shall be given to City, in the form of Exhibit "B" attached hereto and made a part hereof.

F. All of Company's attachments shall conform to the National Electric Safety Code.

G. Company shall pay City for said attachments on City's poles a rental of \$3.00 per pole per year or fraction thereof during which the attachment continues, such rental being payable in advance. Such payments during each ensuing contract year shall be made in advance with the total amount of such rental being based upon estimates approved by City, and at the end of each contract year the actual pole rental for that contract year shall be adjusted, and payment or reimbursements shall be made within thirty (30) days following the close of each contract year.

H. City assumes no responsibility for securing any franchises, rights-of-way, permits or easements which the City does not already own, making and maintaining of such attachments, or permission to make such attachments to the poles of others, but Company assumes the duty and responsibility of securing the same. The permission herein granted is likewise subject to laws, ordinances and regulations now in force or which may hereafter be enacted or promulgated by any governmental body or agency having jurisdiction. City shall in no way be responsible for the construction, operation, maintenance, performance, or any other activity of Company or its system or any part thereof.

I. In the event the installation of Company's proposed attachments would interfere with attachments already in place belonging to others, the location and method of attachment of Company's facilities shall be decided by City.

J. Company's attachments to said poles shall be made and maintained by Company at Company's expense in a place and manner satisfactory to City; and, upon receipt of notice from City that said attachments interfere with City's property or any relocation, removal or rearrangement thereof, or endanger the public or its employees, Company shall, at its own expense, alter, rearrange, re-route, improve or repair said attachments in such manner as City may direct.

K. Company agrees to take any necessary precautions, by the installation of protective equipment or otherwise, to protect all persons and property against

injury or damage that may result from Company's installations or operations. If, in City's opinion, Company has not taken such necessary precautions, within a reasonable time after City has so notified Company, City shall have the right by written notice to Company to terminate this contract. However, City shall not be considered in any way responsible for the adequacy or inadequacy of such precautions of Company.

L. With respect to equipment requiring a continuous and relatively invariable use of electricity, the City shall have the option of charging the Company a flat rate of 2¢ per KWH for the electricity consumed per month based on estimated total usage of such equipment instead of metering electricity to each such piece of equipment; provided that such rates may be adjusted upward or downward whenever electric rates are changed by proper authority.

M. No overhead construction of television cables will be permitted in areas where electric and telephone service is required to be underground, and the Company may not use City's underground electric conduit.

(3) Non-Exclusive Grant. The rights and privileges herein granted shall not be exclusive, but the City reserves the right to make a similar grant to any person at any time.

3.

#### Indemnification and Waiver

The Company hereby agrees to indemnify and save City harmless from all claims, damages, and liability which would not have arisen but for the exercise by Company of the rights and privileges herein described. Company likewise waives all claims, damages and liability it could ever assert against City, as to all claims, damages, and liability which would not have arisen but for the exercise by Company of the rights and privileges herein described.

4.

#### Equipment and Operation

In order to provide adequate civil defense and disaster service information to prevent the distribution of defamatory, obscene, and other programs which, for any reason may be actionable, Company hereby agrees to install a system with the capability, equipment, facilities and personnel necessary to immediately interrupt signals being distributed on any one channel or on all channels at once, and to transmit another program or signal in the place of the signal or program interrupted; and further agrees to:

(a) distribute television signals on not less than eight (8) VHF channels;

(b) distribute all UHF and VHF telecasts originating in Travis County, and telecasts originating in Station KLRN-TV, and agrees to distribute such telecasts as a part of its regular service unless Company is requested not to distribute any such telecasts by the telecaster or by any person having a lawful right to prevent such distribution;

(c) distribute weather information service satisfactory to City;

(d) distribute television signals requested by Civil Defense and Disaster Authorities - on all channels; and

(e) transmit signals at all hours of telecasting signals which the Company is equipped to receive.

5.

Company shall at all times maintain a sufficiently competent staff to adequately service all of the equipment which it furnishes, during all hours of telecast distribution.

6.

#### Compliance with Applicable Laws and Ordinances

The Company shall, at all times during the life of this Contract, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter by valid resolution or ordinance provide.

Company further agrees to comply with all provisions of its Proposal to the City Council dated January 3, 1963.

7.

#### Insurance

The Company shall procure and furnish and file with the City Clerk a policy of insurance approved by the City Attorney covering liability and property damage with the minimum amounts of liability thereunder as follows: Three Hundred Thousand Dollars (\$300,000) for any one single personal injury to any one person; Five Hundred Thousand Dollars (\$500,000) for personal injury in any one single accident; and One Hundred Thousand Dollars (\$100,000) property damage for any one single accident.

8.

#### Company Rules

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this contract, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Texas.

9.

#### Conditions on Street Occupancy

(1) Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference 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 said streets, alleys or public ways and places.

(2) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the City Manager, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in such condition, reasonable wear and tear and acts of God only excepted, for a period of one (1) year.

(3) Relocation. In the event that at any time during the period of this contract the City shall elect to alter or change the grade of any street, alley or public way, or change the method or manner of use of any property or property right owned or contracted by City, then Company, upon reasonable notice by the City Manager, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other appurtenant fixtures at its own expense.

(4) Placement of Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, and all such poles or other fixtures shall be placed as directed by City and in such manner as not to interfere with the usual travel or use of streets, alleys, public ways or other properties.

(5) Temporary Removal of Wire for Building Moving. The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires and cables to permit the moving of buildings. The expense of such temporary removal, raising or lower of wires and cables shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary changes.

(6) Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wire and cables of the Company, all such trimming to be done under the supervision and direction of the City Manager and at the expense of the Company.

10.

#### Preferential or Discriminatory Practices Prohibited

The Company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this contract shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

Company may prescribe a residential rate during the first three years of this contract not to exceed \$4.95 per month per connection to any individual dwelling unit but Company may not require an installation charge or connection fee not prescribed herein. Extensions to more than one television set in the same dwelling unit may not exceed \$1.00 per set per month. Rates for service other than to private dwelling units shall be established by the Company. Company shall make no charge for programs except those charges expressly authorized herein.

After the third contract year, all rates shall be subjected to adjustment by the City Council so as to yield the Company a fair return on the fair value of its investment.

11.

Extension Policy

The Company shall, where necessary to supply any person who will contract with it for its service and pay to Company in cash at said time three (3) months advance service charge and who may make written demand therefor, extend any of its existing cables a distance of not to exceed one hundred (100) feet per customer.

12.

Approval of Transfer

The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this Contract to another except with the written approval of the City Council.

13.

Payment of Gross Receipt Taxes to City

Within thirty (30) days following the close of each contract year, Company shall pay to the City a sum equal to two per cent (2%) of the gross amount taken in and received by said Company from the operation of all facets of its business during such contract year.

14.

Records and Reports

The City shall have access at all reasonable hours to all of the Company's plans, contracts and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company, and to all other records required to be kept thereunder. The following records and reports shall be filed with the City Clerk and in the local office of the Company:

(1) Company Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the Company for the conduct of its business.

(2) Gross Revenue. An annual summary report showing gross revenues received by the Company during the preceding year, and such other information as the City shall request with respect to properties and expenses related to the Company's service.

15.

Duration of Contract

The authority and rights herein granted shall take effect immediately upon execution of this Contract by City and shall continue in force and effect for a term of twenty (20) years after the effective date hereof. Provided, however, this Contract shall automatically terminate if Company has not begun installation of the system and the distribution of television signals as prescribed

herein within twelve (12) months from date hereof. The authority may likewise be terminated by City unless diligence is exercised in expanding the system after initial commencement, or if Company should fail or cease to furnish the herein-described services. If Company should fail to comply with any of the provisions of this Contract or default in any of its obligations hereunder and shall fail within 30 days after written notice from City to correct such default, non compliance or breach, City may, at its option, forthwith terminate in whole or in part, Company's rights hereunder, and require Company to remove all of Company's equipment installed in all of the locations which this Contract enumerates. If Company should fail to remove any of said equipment, City shall have the right to remove it at the cost and expense of Company.

Company agrees that no use of any property or right by it, however extended, nor any payment made, nor any other action or inaction by City or by Company shall create or vest in Company any ownership or property right in any of the properties or property rights occupied or used or upon which any expense has been undertaken by Company as a result of the exercise by Company of the rights and privileges enumerated in this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to become effective as of the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1963

CITY OF AUSTIN - "CITY"

By: \_\_\_\_\_  
City Manager

ATTEST:

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

\_\_\_\_\_  
"COMPANY"  
BY: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

EXHIBIT "A"

APPLICATION

In accordance with the terms of our agreement dated \_\_\_\_\_, 19\_\_\_\_, application is hereby made for permission to make attachments of television facilities to \_\_\_\_\_ of your poles in and in the vicinity of Austin, Texas, at the locations shown on the sketch attached.

\_\_\_\_\_  
- "COMPANY"  
BY \_\_\_\_\_

Date \_\_\_\_\_, 19\_\_\_\_

TITLE \_\_\_\_\_

-----

CONDITIONS

In order to provide space on the poles set forth above, it will be necessary for the City of Austin, Texas to make the following changes in its distribution system:

The approximate cost of doing this work is \$\_\_\_\_\_, and, if this meets with your approval, please indicate your acceptance in the space provided. After receipt of your acceptance, we will proceed to make such changes, billing you for the cost thereof upon completion of the work.

ACCEPTED:

THE CITY OF AUSTIN, TEXAS

\_\_\_\_\_"COMPANY"

BY: \_\_\_\_\_

BY \_\_\_\_\_

DATE \_\_\_\_\_, 19 \_\_\_\_

TITLE \_\_\_\_\_

Job Order No. \_\_\_\_\_

DATE \_\_\_\_\_, 19 \_\_\_\_

PERMIT

Permission is hereby granted Company to make attachments to the poles at the locations set forth in the above application.

THE CITY OF AUSTIN, TEXAS

Inventory of Poles Used by Company		
Previous Balance	Added by This Permit	New Balance

BY \_\_\_\_\_

Permit No. \_\_\_\_\_

Final Endorsement

Permitted attachments completed \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ M.

\_\_\_\_\_- "COMPANY"

BY \_\_\_\_\_

TITLE \_\_\_\_\_

(THIS APPLICATION, CONDITIONS AND PERMIT MUST BE MADE IN QUADRUPLICATE)

EXHIBIT "B"

NOTICE OF REMOVAL OF ATTACHMENTS OF TELEVISION CABLE AND NECESSARY APPURTENANT FACILITIES TO POLES OWNED BY THE CITY OF AUSTIN, TEXAS

\_\_\_\_\_, TEXAS

\_\_\_\_\_, 19\_\_\_\_



THE CITY OF AUSTIN, TEXAS

AUSTIN, TEXAS

GENTLEMEN:

In accordance with the terms of our agreement dated \_\_\_\_\_, 19\_\_\_\_, you are hereby notified of our desire to remove all attachments on your poles in and in the vicinity of Austin, Texas, as shown on the attached sketch.

\_\_\_\_\_ - "COMPANY"

BY \_\_\_\_\_

TITLE \_\_\_\_\_

Inventory of Poles Used by Company		
Previous Balance	Removed by This Notice	New Balance

RECEIPT OF NOTICE ACKNOWLEDGED:

THE CITY OF AUSTIN, TEXAS

BY \_\_\_\_\_

REMOVAL NOTICE NO. \_\_\_\_\_

TITLE \_\_\_\_\_

Final Indorsement

This removal completed \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_ - "COMPANY"

BY \_\_\_\_\_

TITLE \_\_\_\_\_

(This notice of Removal must be made in Quadruplicate)

The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer

Noes: None

Absent: Councilman Armstrong

MISS DEMP TONEY (Secretary to Trueman O'Quinn) handed the Mayor a statement regarding the Council's refusing to delay the T. V. matter.

Councilman White offered the following resolution and moved its adoption:

(RESOLUTION)

WHEREAS, the City Council of the City of Austin by Resolution dated December 31, 1959, authorized the City Manager to enter into a contract for the acquisition of right-of-way on U. S. Highway 183 near the Montopolis Bridge in Austin, Texas; and,

WHEREAS, acting in compliance with the terms of this contract, the City of Austin has found and determined that in order to acquire certain right-of-way it will be necessary for the Sinclair Pipe Line Company to make certain adjustments of the facilities of said Sinclair Pipe Line Company; and,

WHEREAS, said Sinclair Pipe Line Company has submitted certain plans and estimates as to the cost of said adjustments and has agreed to accomplish the work on said adjustment on an actual cost basis; and,

WHEREAS, the State of Texas concurs in the manner of accomplishing said adjustment on an actual cost basis; and,

WHEREAS, the State of Texas has reviewed said plans and estimates and feels that the work which said Sinclair Pipe Line Company proposes and the method by which said Sinclair Pipe Line Company proposes to accomplish this work is satisfactory; and,

WHEREAS, the State of Texas has advised the City of Austin that all items appearing in said plans and estimates are eligible for State participation according to the terms of the above referred contract and has requested the City of Austin to advise the said Sinclair Pipe Line Company to proceed with said adjustment; and,

WHEREAS, the City of Austin has determined that said plans and estimates of the work which said Sinclair Pipe Line Company proposes and the method by which they propose to accomplish the said adjustment is satisfactory; and,

WHEREAS, the City of Austin has determined that it is to its best interest to authorize said Sinclair Pipe Line Company to accomplish this work on an actual cost basis and to pay said Sinclair Pipe Line Company its justified final billing of actual cost upon completion of the work; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager be and he is hereby authorized and directed to authorize Sinclair Pipe Line Company to proceed with the adjustment of its facilities in the vicinity of U. S. Highway 183 near the Montopolis Bridge in Austin, Texas on an actual cost basis according to the plans and estimates heretofore submitted by said Sinclair Pipe Line Company.

The motion, seconded by Councilman Shanks, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer

Noes: None

Absent: Councilman Armstrong

The City Manager made a report on the Holly Street Power Station, stating another unit will be needed by May, 1966. It is recommended that a unit of 165,000 KW with a peak capacity of 200,000 be installed. If this size unit is installed, there will be still another unit needed on the line by the summer of 1969. It takes 15 months to prepare specifications and 21 months for construction. The Consulting Engineers will be proceeding with the design of the 165,000 KW unit. The Engineers had been authorized to do the design, but they had to determine which size.

The City Manager had a letter from the Driskill Hotel addressed to the Director of Aviation in which MR. BOB ROSS, Manager, gives notice effective February 1st, they will close the dining room in its entirety and open the coffee shop. The Aviation Director is concerned about service to the people. Mr. Ross stated their loss on operations was too much. Members of the Council expressed themselves as favoring making some concessions on a temporary basis in order to keep the dining room open until another operator could be found. Councilman Perry suggested that MR. HARRY AKIN be contacted again since he was first interested in the dining room. Councilman Perry moved that the City Manager be authorized to talk to Mr. Ross and Mr. Harry Akin and anyone else he wants to, and come back with a recommendation. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer  
Noes: None  
Absent: Councilman Armstrong

The City Manager read a letter addressed to the Council from the State Building Commission enclosing a copy of a resolution adopted by the Architectural Advisory Committee in which they recommended that such an advisory committee be continued, and that the new members meet with the old members to discuss plans around the Capitol, and that various people be invited, including the architects as well as the developers of the proposed building at 12th and Lavaca.

Councilman Shanks moved that the City Manager be authorized to approve the selection by Hartford Steam Boiler Inspection and Insurance Company of contractors to repair the damage to boiler No. 9 at the Seaholm Power Plant. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer  
Noes: None  
Absent: Councilman Armstrong

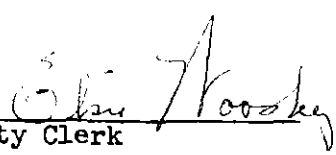
Mayor Palmer stated in regard to the Lutheran Church and Student Center, the Architect, Leonard Lundgren, was anxious to get started. The Mayor asked if it were the feeling of the Council that they go ahead with this building at 26th and Wichita. Councilmen Perry, Shanks, and White agreed. The Mayor stated this would be turned over to the City Manager.

There being no further business, Councilman Perry moved that the Council adjourn. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Perry, Shanks, White, Mayor Palmer  
Noes: None  
Absent: Councilman Armstrong

The Council adjourned subject to the call of the Mayor.

ATTEST:

  
City Clerk

APPROVED

  
Mayor