

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting

February 6, 1963
10:00 A.M.

Council Chamber, City Hall

The meeting was called to order with Mayor Palmer presiding.

Roll call:

Present: Councilmen Armstrong, Perry, Shanks, White, Mayor Palmer
Absent: None

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

The Mayor announced this meeting was called for the purpose of awarding contract for television signal distribution system to qualified applicants and considering problems relating thereto and connected therewith.

The City Attorney reported the contract had been checked. Mr. Campbell used the standard form of contract that the other applicant had executed and such contract has been prepared and checked with Mr. Campbell and his Attorneys, and it is agreeable with them.

The Mayor read the resolution authorizing and directing the City Manager to execute the standard form of contract being in the form shown in "Exhibit 1" with JOHN G. CAMPBELL, d/b/a TV CABLE OF AUSTIN. Councilman White 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, John G. Campbell, doing business under the name of TV Cable of Austin, has 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 applicant; 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 shown in "Exhibit 1" which is attached to this Resolution with said John G. Campbell, d/b/a TV Cable of Austin.

"Exhibit 1

"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 John G. Campbell, an individual doing business as TV Cable of Austin, with its principal office and place of business in Austin, Travis County, Texas, 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 such use will not interfere with the public's use or the City's use, and 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 make 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 February 4, 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 lowering 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 subject 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, not 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, noncompliance 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 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 6th day of February, A.D., 1963.

CITY OF AUSTIN - "CITY"

By: _____

City Manager

ATTEST:

City Clerk

John G. Campbell, d/b/a
TV CABLE OF AUSTIN

By: _____

Proprietor

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

BY _____

Previous Balance	Added by This Permit	New Balance

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 _____

TITLE _____

REMOVAL NOTICE NO. _____

Final Indorsement

This removal completed _____, 19__.

_____"COMPANY"

BY _____

TITLE _____

(This notice of Removal must be made in Quadruplicate)

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

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

The Mayor expressed his delight in having this application filed, and asked when he expected to start operations. Mr. Campbell stated they were ready to start now. Councilman Shanks stated since the other interested party connected with the newspaper withdrew, he hoped the newspaper would be generous enough to let the citizens know that the City did not have a monopoly in TV, that it has competition and would welcome more competition.

The matter of out-of-town advertising was discussed. Mr. Campbell stated he had studied this technicality, but he could not comment on the legality. The monitoring of the signals could be done. When the signal comes on, there can be an announcement that the advertisement has been replaced. This would necessitate one man's being present at all times. Councilman Armstrong stated he, in behalf of the merchants of Austin, preferred having it block out rather than having out of town merchants' advertisement. Lengthy discussion was held on blocking out the advertisements from out of town stations. Councilman White inquired if one did not chose to connect with the Cable TV and depended on the local station, would that person be able to get the same shows as had been programmed. MR. PAUL BOLTON, KTBC-TV, stated the station would be on the air for any one who wanted free TV, and he hoped they could continue to sell the same programs.

The Mayor stated he had purposely refrained from making any public announcement or comment; however, it appeared now that the Council had been asked for a public statement, and it seems that the policy of the Council as laid down was questioned as to whether or not it was in the public interest, and he was compelled to make this statement. As the other Council Members had said, the Council had worked hard and diligently on trying to secure for the people of Austin the best possible TV viewing. There had been some honest sincere disagreements with the Council's policy, and the Council had tried to answer them. There had been many wreckless statements and questions raised, which were borne of iniquity. They had been nurtured by hate and deceit; they had been inflamed by aluding to falsehoods, and he did not feel they deserved the dignity of an answer. The Council recognized this would be a controversial issue. In face of this, it felt there was a public demand for additional TV viewing, and called a public hearing. It was overwhelmingly decided at this meeting that the people of Austin wanted additional TV viewing. The Council asked for proposals to be submitted on January 3rd at which time several applicants filed their proposals. The Council publicly stated that it would look over those proposals and it reserved the right to accept or reject any and all proposals. After reviewing the four proposals, which were submitted in keeping with the public announcement made, the Council attempted to take the best parts of each proposal together with the legal requirements to protect the City's interest, together with the technical information regarding electricity and rates submitted by the City Manager, and all of these points were incorporated in a resolution which was adopted and all applicants who could meet these requirements would be given a contract with the City. One applicant stated in his proposal that he wanted an exclusive franchise. Another applicant stated publicly that he felt the City Council should select one applicant and thereby grant a monopoly through this medium. It was also stated publicly that unless they were the only Company to be given a contract, that it would be difficult and almost impossible to finance the proposal. One applicant requested that they be permitted to charge a deposit of no more than \$25.00 for each subscriber, and had stated that by 1965 they hoped to have 15,000 customers. This would represent a sum paid by the public of some \$300,000 which would be

used to finance their proposal. The Council did not feel that to be in the public interest, and it sincerely hoped that no future Council would consider it in the public interest to grant a contract for a monopoly whereby they must use the public funds for a three year period. He stated it was felt all along that any company could comply with the requirements that the Council laid down. The Council is extremely pleased that another contract has been granted this morning, and it feels that this will assure the people through a competitive situation good TV viewing pictures and at a fair monthly rate. It was regretted that a few disciples of discord chose to cloud the issue by attempting to enter personalities into this program. The Council has always tried its best to look after the public's interest in this controversy as well as many others that this Council has faced up to. He stated he hoped that somehow from the friction of controversy that the spark of truth would be known.

MR. DEASON asked if the Council were opening this up for a third, fourth or fifth application. The Mayor stated it was. Councilman Shanks stated they were welcomed and the Council encouraged them.

MR. CAMPBELL stated he had signed a contract with Bell Telephone Company, and that he had made a contract before, and the Company had always been fair, and he had felt he could negotiate a contract, and he did yesterday morning. He thanked the Council for the courtesies extended. He said he did not believe he had ever had the courtesies extended that he had here.

COUNCILMAN PERRY stated the Council had continuously fought for the rights of the people of Austin against all powers which had threatened those rights, and it will continue to do so regardless of the abuse each suffers personally.

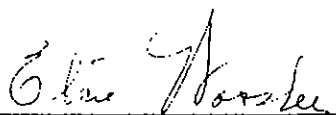
COUNCILMAN SHANKS stated it was a matter of record that this Council had always recognized all constructive criticism. They had sought it and they had recognized it; but he said that when news is slanted to question the integrity of this Council, he, for one member of this Council, was ready to fight with everything that he had. He said he was a firm believer that the public is entitled to the truth--all the truth on everything that happens at City Hall and he hoped and prayed that the Mayor's very fine comprehensive statement was given an honest presentation to the public by all media of the press. He stated the Council was certainly against monopoly of any kind, particularly what they had been dealing with.

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


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

The Council adjourned at 10:55 A.M., subject to the call of the Mayor.

ATTEST:


City Clerk

APPROVED


Mayor