

910. CABLE FRANCHISE: SECURITY FUND

910.010 SECURITY FUND

Within thirty (30) Days of the Effective Date, Grantee shall establish and provide to the City or the Commission, on behalf of the City, as security for the faithful performance by Grantee of all provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City or the Commission in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) ("Security Fund"). Failure to post the Security Fund shall constitute a material violation of this Franchise. The Security Fund shall serve as security for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. The obligation to establish the Security Fund required by this paragraph is unconditional. If Grantee fails to establish the Security Fund as required, the City may take whatever action is appropriate to require the establishment of that Security Fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Five Thousand Dollars (\$5,000) in that action.

910.020 WITHDRAWAL OF FUNDS

The Security Fund shall permit the City to withdraw funds upon demand (sight draft). Grantee shall not use the Security Fund for other purposes and shall not assign, pledge or otherwise use this Security Fund as security for any other purpose.

910.030 LIQUIDATED DAMAGE

Subject to Section 910.050 and 910.110, in addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Security Fund the following liquidated damages:

- (a) For failure to provide data, documents, reports or information or to cooperate with City during an application process, audit, or System review, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Section 910.030, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.
- (c) For failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Five Hundred Dollars (\$500.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the PEG Channels, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

910.040 EACH VIOLATION A SEPARATE VIOLATION

Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. However, to the extent City remains a Member City of Commission, liquidated damages under Section 910.030 for a violation of each Member City franchise shall be calculated by the Commission as one violation, and not as multiple violations (one violation for each individual Member City franchise). For example, liquidated damages per Day under Section 910.030(a) would equal Two Hundred Fifty Dollars (\$250.00), not One Thousand Seven Hundred Fifty Dollars (\$1,750) (seven times the per Day liquidated damages amount).

910.050 MAXIMUM DRAW PER VIOLATION

Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of Twenty-Five Thousand Dollars (\$25,000). If after that amount of draw from the Security Fund Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

910.060 WITHDRAWAL OF FUNDS TO PAY TAXES

If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days' notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the Security Fund, the City may then draw from the Security Fund. Payments are not Franchise Fees as defined in Section 916 of this Franchise.

910.070 PROCEDURE FOR DRAW ON SECURITY FUND

The parties shall follow the procedure set forth in Section 911 of this Franchise regarding any withdrawal from the Security Fund.

910.080 GRANTEE'S RIGHT TO PAY PRIOR TO SECURITY FUND DRAW

Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the Security Fund in accordance with the terms of this Franchise.

910.090 FAILURE TO ESTABLISH SECURITY FUND

City may draw on said Security Fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are

not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to establish a Security Fund under Section 910.010 may also, at the option of City, be deemed a violation by Grantee under this Franchise. The drawing on the Security Fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such violation.

910.100 REPLENISHMENT OF SECURITY FUND

If Commission or City exhaust the Security Fund under Section 910.050 during a given violation proceeding, Grantee shall have no obligation to replenish the Security Fund for such violation proceeding. However, Grantee must replenish the Security Fund as security for any future franchise violation. If the amount of the Security Fund established under Section 910.010 is not enough to secure the performance of the obligations described in Section 910.010, then the City or the Commission must resort to the Bond provided in Section 909 or other enforcement mechanisms provided under Section 911.

910.110 COLLECTION OF FUNDS NOT EXCLUSIVE REMEDY

The collection by City of any damages or monies from the Security Fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the Security Fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this Section, however, should the City elect to impose liquidated damages, that remedy shall remain the City's exclusive remedy for one hundred twenty (120) Days or for the period needed for the Security Fund draw to reach the maximum in Section 910.050, whichever is less.