

AN ORDINANCE 2009-10-01-0770

AUTHORIZING A 10-YEAR LICENSE AGREEMENT WITH TIME WARNER CABLE FOR USE OF PUBLIC PROPERTY AND RIGHT-OF-WAY FOR A COMMUNICATION CABLE FROM 114 W. COMMERCE STREET TO 100 W. HOUSTON STREET IN COUNCIL DISTRICT 1 FOR A FEE OF \$7,500.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

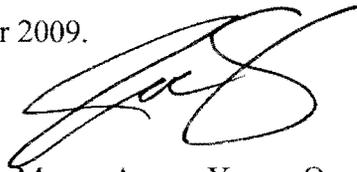
SECTION 1. The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000061, General Ledger 4202410.

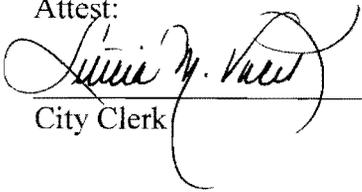
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance becomes effective 10 days after passage unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 1st day of October 2009.

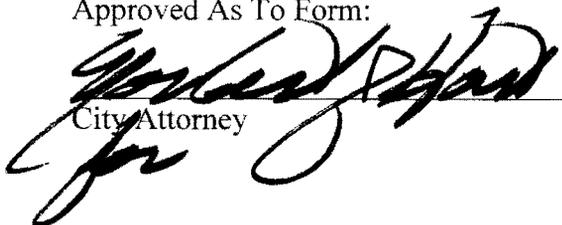

M A Y O R
JULIÁN CASTRO

Attest:



City Clerk

Approved As To Form:



City Attorney

Agenda Item:	16 (in consent vote: 5, 6, 12, 13, 15, 16, 17, 18, 20, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 25I, 25J, 25K, 25L, 26, 27, 28, 29)						
Date:	10/01/2009						
Time:	09:32:38 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a 10-year license agreement with Time Warner Cable for use of public property and right-of-way for a communication cable from 114 W. Commerce Street to 100 W. Houston Street in Council District 1 for a fee of \$7,500.00. [Penny Postoak Ferguson, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Attachment I

License Agreement

(Time Warner Cable // E. Commerce Street)

This License Agreement (“License”) is entered into between Licensee and the City of San Antonio (“Licensor”) under the authority of the Authorizing Ordinance.

Table of Contents

1. Identifying Information.....	2
2. Grant of License.....	3
3. Restrictions on Use/Recording.....	3
4. License Fee.....	3
5. Construction, Maintenance, and Operations.	3
6. Indemnity.....	4
7. Insurance.	5
8. Termination.....	7
9. Assignment/Sublicensing.....	7
10. Condemnation.	7
11. Attorney's Fees and Court Costs.....	7
12. Taxes and Licenses.....	7
13. Prohibited Interests in Contracts.	7
14. Licensee Financing.....	8
15. Lien for License Fee, Taxes, Fees and Other Charges.	8
16. Consent/Approval of Licensor.....	8
17. Appropriations.....	8
18. Miscellaneous Provisions.....	9
19. Public Information.....	10
Exhibit A.....	12

1. Identifying Information.

Authorizing Ordinance:

Project No.

Licensee: Time Warner Cable San Antonio, LP

Licensee’s Address: 1900 Blue Crest Lane, San Antonio, Texas 78247

Term: 10 years

Fee: \$7,500

Premises: A portion of the public right of way of East Commerce Street within the underground tunnel connecting 114 W. Commerce and 100 W. Houston between North Flores Street and South Main Avenue encroached upon by Licensee within the Scope of the License.

Scope of License: Installation and use of fiber optic conduit up to four and one-half inches in outside diameter.

Effective Date: The effective date of the Authorizing Ordinance

Licensor's Address: City Clerk, City of San Antonio, P.O. Box 839966/2nd Floor, City Hall, San Antonio, Texas 78283-3966

2. Grant of License.

Licensor grants Licensee a license (License) to use and maintain the Premises within the Scope of the License. This License is limited to the stated Term and is conditioned on Licensee's payment of the Fee. This license does not relieve Licensee of any other approvals, permits, or licenses that may otherwise be required including but not limited to right-of-way management permits. This license is subject to all pre-existing rights of the San Antonio Water System, CPS Energy, telecommunications and cable companies, and others who have rights in the Premises. Licensor expressly disclaims a covenant of quiet enjoyment as to this License.

3. Restrictions on Use/Recording.

3.01. This License does not grant Licensee authority to use any public rights-of-way beyond the Premises.

3.02. This License grants only a privilege, not a real property interest. Licensor may enter the Premises at any time to assert its real property interest or for other purposes not interfering unreasonably with the Scope of License.

3.03. A Memorandum of License Agreement in substantially similar form as found in **Exhibit A** will be recorded by Licensor in the Official Public Records of Real Property of Bexar County, Texas. Licensee must pay the recording fees.

4. License Fee.

Licensee must pay the Fee in a one-time lump sum, on or before the Effective Date. The Fee must be paid at the Department of Capital Improvement Management Services, 114 W. Commerce St., 2nd Floor (c/o Property Disposition Manager), San Antonio, Texas 78205.

5. Construction, Maintenance, and Operations.

5.01. Costs. Licensee is solely responsible for all costs of construction, installation, repairs, maintenance, operation, and the like of any property placed on the Premises.

5.02. No Liability. Licensor assumes neither liability nor expense under this License. Licensor is not liable to Licensee or otherwise for damage to the Premises arising from or related to activities of Licensor in the vicinity.

5.03. Relocation. If Licensor's needs require relocation, maintenance, or adjustment in the Premises or improvements by Licensee thereto, the relocation, maintenance, or adjustments will be at Licensee's sole cost and expense.

5.04. Maintenance. Licensee, at its sole cost and expense, must maintain all improvements it constructs or installs on the Premises. In so doing, Licensee must adhere to all applicable safety standards and must adhere to all applicable federal, state, or local laws, rules, or regulations.

5.05. No Power to Bind. Licensee cannot bind or permit another to bind Licensor for payment of money or for any other obligation.

5.06. Contractors and Subcontractors. Licensee must promptly pay anyone performing work on behalf of Licensee who could file a mechanics' or materialmen's lien on the Premises. If any such lien is filed, Licensor may treat it as an event of default and terminate this License by delivering 45 days prior written notice to Licensee. But if the lien is removed or released of record within the notice period, this License remains in effect. Licensee remains obligated to clear the lien without cost to Licensor even after termination.

6. Indemnity.

6.01. These definitions apply to the indemnity provisions of this Contract:

6.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

6.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Licensee.

6.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

6.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

6.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

6.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

7. Insurance.

7.01. Without limiting Licensor's rights to indemnity, Licensee must provide and maintain insurance, at its own expense, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company or provide evidence of self-insurance, in the following types and amounts:

Type	Amount
1. Worker's Compensation during the performance of improvements to the Premises or an approved alternate plan at other periods during the Term.	Statutory, with a waiver of subrogation in favor of Licensor
2. Employers' Liability during improvements to the Premises or an approved alternate plan at other periods during the Term.	\$500,000 per category, with a waiver of subrogation in favor of Licensor
3. Commercial General (Public) Liability – to include coverage for the following where the exposure exists: (a) Premises/Operations	For Bodily Injury and Property Damage: \$1,000,000 per Occurrence, \$2,000,000 general aggregate or its equivalent in

- | | |
|---|--|
| <ul style="list-style-type: none"> (b) Independent Contractors (c) Products/Completed (d) Personal Injury Liability (e) Contractual Liability (f) Explosion, Collapse and Underground Property (g) Broad Form Property Damage | <p>Umbrella or Excess Liability coverage.</p> |
| <p>4. Property Insurance -- for physical damage to the property of Licensee including improvements and betterments to the Premises.</p> | <p>Coverage for a minimum of 80% of the actual cash value of the improvements.</p> |

Any substitute for Workers' Compensation and Employer's Liability must be approved in advance by Licensor's Risk Manager.

7.02. Licensor's Risk Manager may reasonably modify the above requirements if he determines the modification is in the Licensor's best interest. If Licensee believes the requested change is unreasonable, Licensee has 60 days to give notice of termination. The termination provisions then apply.

7.03. With respect to the above required insurance, each insurance policy required by this License must contain the following clauses:

“No insurance or self-insurance provided by Licensee can be canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

Department of Capital Improvement Management Services
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966
 Attention: Property Disposition Manager”

“Any insurance or self-insurance provided by Licensee is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, not in contribution with, insurance provided by this policy.”

7.04. Each insurance policy required by this License, excepting policies for Workers' Compensation, Employer's Liability and Professional Liability, must contain the following clause:

“The City of San Antonio, its elected officials, employees, agents, and representatives are added as additional insureds.”

7.05. Licensee must deliver to Licensor, within 30 days after the Effective Date, endorsements to the above-required policies adding the applicable clauses referenced above. Such endorsements must be signed by an authorized representative of the insurance company and show the signatory's company affiliation and title. Licensee must deliver to Licensor documentation acceptable to Licensor confirming the authority of those signing the endorsements.

7.06. The Notices and Certificates of Insurance must be provided to the same address as for notices of cancellation.

7.07. This License does not limit Licensee's liability arising out of or related to the Premises or Licensee's activities thereon.

7.08. Licensee waives all claims against Licensor for injury to persons or property on or about the Premises, whether or not caused by Licensor's negligence.

8. Termination.

8.01. Licensor may terminate this License at any time before expiration by giving Licensee 30 days' written notice.

8.02. Upon expiration or termination, all rights and privileges immediately cease, and Licensee must immediately cease use of the Premises. Licensor may direct Licensee to either (a) abandon the encroaching improvements and appurtenances, including lines and equipment; or (b) remove all or any part of them and restore the Premises, at Licensee's sole cost, to original condition. Improvements or appurtenances not removed within 90 days after termination, whether by expiration or otherwise, become the property of Licensor. Licensor may, without liability to Licensee, dispose of such property at a public or private sale, without notice to Licensee. Licensee is liable for Licensor's costs incurred in connection with Licensee's property.

9. Assignment/Sublicensing.

This License cannot be assigned or sublicensed, other than to Licensee's parent or subsidiaries. Licensee must give Licensor 30 days' written notice before such an assignment or sublicense. Licensee cannot lease or sublease the Premises.

10. Condemnation.

If the Premises are taken, in whole or in part, by eminent domain, Licensor may terminate this License as of the date title to the taken land vests in the condemning authority. Licensee waives any claim to condemnation proceeds paid to Licensor. Licensee may seek a separate condemnation award.

11. Attorney's Fees and Court Costs.

In any action in which Licensee is found to have materially defaulted hereunder, Licensor can recover from Licensee its reasonable attorney's fees.

12. Taxes and Licenses.

Licensee must pay, on or before the due date all federal, state, and local taxes, license fees, permit fees, and similar charges now or hereafter levied on Licensee or its property or on the Premises and arising from Licensee's use thereof.

13. Prohibited Interests in Contracts.

13.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or

employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (a) a City officer or employee;
- (b) his parent, child or spouse;
- (c) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (d) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02. Licensee warrants and certifies as follows:

- (a) Licensee and its officers, employees and agents are neither officers nor employees of the City.
- (b) Licensee has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

13.03. Licensee acknowledges that City’s reliance on the above warranties and certifications is reasonable.

14. Licensee Financing.

Licensee may encumber Licensee’s personal property on the Premises, and any lien of Licensor (whether by statute or under this License) is subordinate to the financing lien. Licensor will acknowledge this subordination in writing, if the proffered documents do not modify the rights and obligations of this License. The City Manager or a designee may execute such documents, without a further ordinance. But if the documents modify the License, then a specific ordinance is required.

15. Lien for License Fee, Taxes, Fees and Other Charges.

Licensee grants Licensor a security interest in Licensee’s property on the Premises. The security interest secures payment of the Fee and all taxes, fees, and other charges owing because of Licensee’s use under this License. Licensee may dispose of the property free of the security interest in the ordinary course of business. At Licensor’s request, Licensee must execute a financing statement.

16. Consent/Approval of Licensor.

When Licensor’s consent and approval is called for under this License, the consent and approval may be granted or withheld by the Director of Capital Improvement Management Services, unless the City Charter requires Council action.

17. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to

N. FLORES ST.

N FLORES ST

100 W. HOUSTON
(FROST BANK)

N. MAIN AVE.

N MAIN AVE

W. COMMERCE ST.

W COMMERCE ST

E COMMERCE ST

S FLORES ST

PROPOSED
3" CONDUIT

S MAIN AVE

114 W. COMMERCE ST.
(MAIN PLAZA)

TREVINO ST

