

AN ORDINANCE **2017-04-06-0207**

AUTHORIZING A FIBER LICENSE AGREEMENT WITH TIME WARNER CABLE TEXAS LLC, REFERRED TO AS CHARTER, FOR THE USE OF SPECIFIC CITY PROPERTY FOR INSTALLING AND MAINTAINING FIBER OPTIC CABLE, CONDUIT, AND RELATED FACILITIES TO SUPPORT CABLE TELEVISION AND OTHER RELATED COMMUNICATION SERVICES. CHARTER WOULD FUND THE CONSTRUCTION PROJECT AND INSTALL CONDUIT AND FIBER FOR THE CITY'S PRIVATE USE IN EXCHANGE FOR AN IN-KIND CONTRIBUTION OF EQUIVALENT VALUE OF \$213,286.00.

* * * * *

WHEREAS, Bexar County and the San Antonio River Authority, in coordination with the City of San Antonio, are in the midst of the design phase of the San Pedro Creek Improvements Project, which will transform the creek to improve its function in flood control, revitalize natural habitat and water quality, and will be a catalyst for economic development; and

WHEREAS, Time Warner Cable Texas LLC, hereinafter referred to as Charter, and the City both maintain separate underground fiber optic cable routes that run west to east along Nueva, Dolorosa, Commerce, and Houston Streets that will be directly impacted by the San Pedro Creek Improvements Project; and

WHEREAS, to minimize disruption to the downtown area, Charter and the City have agreed to share a common underground trench on City property; and

WHEREAS, Charter will fund the construction project and install conduit and fiber for the City's private use in exchange for an in-kind contribution of equivalent value of \$213,286.00. A 10-year fiber license agreement to use 5,965 square foot of City property for a conduit bore between Commerce Street and Dolorosa Street, east of Calder Alley; and another between Nueva street and Dolorosa street; has been negotiated by City Staff with Charter; and

WHEREAS, through its Center City Development, the City has conducted a valuation of the required 5,965 square foot area needed for the ten-year license agreement with Charter. Based on \$45.00 per square foot market value with a 6.5% return, with an annual escalation factor of 4% over a ten-year licensing period, and with a \$3,500 processing fee, the cost of the license is \$212,978.00; and

WHEREAS, as provided for in Chapter 37, Section 21(b)(3) of the City Municipal Code, the in-kind contribution provided by Charter are approximately equivalent to the proposed total licensing fee for the term of the license agreement and are allowable as in-kind compensation to the City; and

WHEREAS, the proposed Fiber License Agreement with Charter sets out the terms for the use of specific city property for installing and maintaining fiber optic cable, conduit, and related facilities to support cable television and other related communications services; the proposed Fiber License Agreement is attached to this Ordinance as **Exhibit A**; **NOW THEREFORE**:

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

SECTION 1. The Fiber License Agreement between the City and Time Warner Cable Texas, LLC, referred to as Charter, that sets out the terms for the use of specific city property for installing and maintaining conduit, fiber optic cable, and related facilities to support cable television and other related communications services is hereby approved.

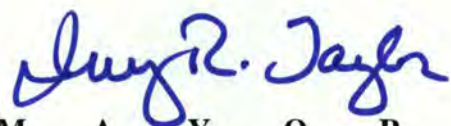
SECTION 2. The City Manager or her designee is authorized to execute the Fiber License Agreement, a copy of which, in substantially final form is set out in **Exhibit A**.

SECTION 3. The Information Technology Services Department will record an in-kind transaction for the services authorized by this ordinance.

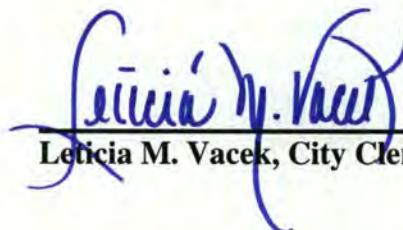
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.


PASSED AND APPROVED this 6th day of April, 2017.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


For Andrew Segovia, City Attorney

Agenda Item:	15 (in consent vote: 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16)						
Date:	04/06/2017						
Time:	09:51:51 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a fiber license agreement with Charter Communications for the use of specific city property for installing and maintaining fiber optic cable, conduit, and related facilities to support cable television and other related communication services. [Ben Gorzell, Chief Financial Officer; Kevin Goodwin, Interim Chief Technology Officer, ITSD]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				

**MASTER LICENSE AGREEMENT FOR NON-EXCLUSIVE USE OF CITY
PROPERTY BETWEEN THE CITY OF SAN ANTONIO AND CHARTER
COMMUNICATIONS**

This License Agreement ("License Agreement") is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "City" or "Licensor"), a Texas Municipal Corporation and Home-Rule Municipality, acting by and through its City Manager, or designee, pursuant to Ordinance No. _____, passed and approved by the City Council on _____, 2017; and **TIME WARNER CABLE TEXAS LLC** (hereafter referred to as "Charter" or "Licensee"). The CITY and the CHARTER may hereinafter be referred to collectively as the "Parties".

WHEREAS, CHARTER desires the use of certain CITY Property for the purpose of installing, and maintaining fiber optic cable, conduit, and related facilities, as defined by this License Agreement; and

WHEREAS, the installation, maintenance, and repair of fiber optic cable, conduit, and related facilities on CITY property will be done in a manner consistent with all City of San Antonio regulations, including the City's Rights-of-Way Management Ordinance and Utility Excavation Criteria Manual; and

WHEREAS, the City hereby set forth rights, duties and obligations of CHARTER in this License Agreement;

NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the same meanings 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 include the plural. The word "shall" is always mandatory and not merely permissive.

- (a) "CITY" means the City of San Antonio, Texas, a home-rule municipality.
- (b) "Chief Information/Technology Officer" means the director of the Information Technology Services Department.
- (c) "Director" means the Director of Transportation & Capital Improvements Department.
- (d) "Excavation Manual" means the Utility Excavation Criteria Manual approved by the Director of Public Works on April 2, 2001 (as amended from time to time) pursuant to the authority granted by the Rights-of-Way Management Ordinance.
- (e) "Facilities" means any and all of CHARTER's ducts, spaces, manholes, poles, conduits, fiber optic cables, repeaters, power sources, and underground passageways, and other equipment, structures, plant, and appurtenances located within CITY Property.

- (f) "Rights-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passes by the San Antonio City Council on January 25, 2001, as amended, and codified by Chapter 29 of the CITY'S Municipal Codes.
- (g) "Rights-of-Way Manager" means the Manager of the Rights-of-Way Management Division of the Transportation & Capital Improvements Department or his designee.

SECTION 2. GRANTING CLAUSE

- (a) The CITY hereby grants CHARTER a non-exclusive license to use and occupy certain CITY property to erect, install, construct, replace, reconstruct, protect, upgrade, remove, operate, and maintain conduit, fiber optic cable, and other Facilities under the CITY's property between Commerce Street and Dolorosa Street, east of Calder Alley, as listed and shown in **Exhibit A** (Legal Description: NCB 117 BLK LOT A2 THRU A5 and NCB 117 BLK LOT A8 OR E 81.7 FT OF 9 & 10), that includes two (2) ten (10) foot locations totaling two hundred (200) square feet (200 SQ FT) to move a four foot (4') by four foot (4') by four foot (4') (4'x4'x4') subsurface vault box out of Calder Alley to accommodate the expansion of underground utility lines as part of the San Pedro Creek Expansion Project. The CITY hereby also grants CHARTER a non-exclusive license to use and occupy certain CITY property to erect, install, construct, replace, reconstruct, protect, upgrade, remove, operate, and maintain conduit, fiber optic cable, and other Facilities under the CITY's property between Nueva Street and Dolorosa Street, as listed and shown in **Exhibit B** (Legal Description: NCB 111 BLK LOT N IRR 417.42 FT OF 20, N IRR 410.22 FT OF 21 & N IRR 212.32 FT OF 23), that includes a fourteen (14) feet wide space totaling five thousand seven hundred sixty five square feet (5765 SQ FT) to provide for the installation of underground utility lines to accommodate the re-routing of lines being moved as part of the San Pedro Creek Expansion Project. A copy of **Exhibit A** and **Exhibit B** are attached to this License Agreement and made a part hereof for all purposes.
- (b) Nothing under this License Agreement shall be interpreted to create or vest in Licensee any easement or other ownership or property interest to any City Property. This License Agreement shall not constitute an assignment of any Licensor's rights to City Property. Licensee shall, at all times, be and remain a licensee only.

SECTION 3. TERM

The License term and the rights, privilege and authority hereby granted shall be in force and effect for a term beginning upon final execution of this License agreement, and shall continue in effect for a term of ten (10) years.

SECTION 4. LICENSE RENEWAL PROCEDURES

- (a) This License Agreement may be renewed by the CITY upon written notice to CHARTER for one (1) subsequent five (5) year period pursuant to the procedures established in this Section, and in accordance with the applicable laws, regulations, and the rules of the State of Texas.

- (b) At least six (6) months prior to the expiration of the term of the License Agreement, CITY shall inform CHARTER in writing of its intent to seek renewal of the License Agreement. During this time period, the CITY shall order a new appraisal of the Rights-of-Way used by CHARTER, and the Parties may re-negotiate other terms of the LICENSE AGREEMENT.
- (c) Upon determination by the City Council that CHARTER's performance is satisfactory, a renewal, subject to the agreed re-negotiation of compensation and other terms may be granted for a period of five (5) years.

SECTION 5. CONSTRUCTION WORK-REGULATION BY CITY

All construction, excavation, and placement of Facilities in the CITY's Property are subject to regulation under the applicable provisions contained in Chapter 29 of the CITY's Code of Ordinances and the Excavation Manual when CHARTER installs, constructs, and maintains Facilities in the CITY's Property, including paying the appropriate permitting fees.

SECTION 6. INCOMPATIBLE FACILITIES

This License is issued by the CITY and accepted by CHARTER with the understanding that, if at any time CHARTER's Facilities are determined in CITY's judgment to be incompatible with CITY's existing or proposed use of CITY Property, CHARTER shall cure any such incompatibility by modifying its Facilities, by removing its Facilities or by taking whatever other action which in CITY's judgment is necessary. CITY equipment installed at the same locations as set out in Section 2 of this License Agreement is also subject to the provisions of this Section 6 and CITY must modify, remove, or take whatever other action the CITY requires CHARTER to undertake. With respect to any request by the CITY to remove or relocate its Facilities, CHARTER shall have up to 365 days to comply, or such longer period as the CITY may agree to in its sole judgment, provided CHARTER is diligently pursuing such relocation or removal, including any necessary corresponding re-route of CHARTER's Facilities. Any modification, removal or whatever other action in the CITY's judgment is necessary will be undertaken at CHARTER's sole expense.

SECTION 7. INDEMNITY

- (a) **General Indemnity Clause** – Licensee covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly, resulting from or related to Licensee's activities under this License Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, employee, consultant or subcontractor of Licensee, and its respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this License Agreement. The indemnity provided for in this

paragraph shall not apply to any liability resulting from the negligence of CITY, its officers, or employees, directors, volunteers and representatives in the instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- (b) The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CHARTER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CHARTER known to CHARTER related to or arising out of CHARTER's activities under this License Agreement and shall see to the investigation and defense of such claim or demand at CHARTER's cost, except as otherwise provided under this License Agreement. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CHARTER of any of its obligations under this paragraph. The CITY shall also advise CHARTER in writing within 24 hours of any claim or demand against the CITY or CHARTER known to CITY related to or arising out of CHARTER's activities under this License Agreement
- (c) Defense Counsel - CITY shall have the right to approve defense counsel to be retained by CHARTER in fulfilling its obligation hereunder to defend and indemnify CITY, which approval shall not be unreasonably denied, conditioned or delayed, unless such right is expressly waived by CITY in writing. CHARTER shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this License Agreement. If CHARTER fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CHARTER shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- (d) In any and all claims against any party indemnified hereunder by any employee of CHARTER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CHARTER or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 8. INSURANCE REQUIREMENTS

- (a) Prior to the commencement of any work under this License Agreement, the Licensee shall furnish copies of all required endorsements and an completed Certificate(s) of Insurance to the CITY's Information Technology Services Department, which shall be clearly labeled "*CHARTER Master License Agreement for Use of CITY Property*"

in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the CITY's Information Technology Services Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

- (b) CITY reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the CITY allow modification whereupon the CITY may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.
- (c) The Licensee's financial integrity is of interest to the CITY; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

Type of Coverage	Amounts
1. Professional Liability (ClaimsMade Form)	\$1,000,000 per claim and aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
2. Workers' Compensation	Statutory
3. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
4. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/complete operations d. Personal and Advertising Injury e. Contractual liability f. Property damage, to include Fire Legal Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and General Aggregate limit of \$2,000,000, or its equivalent in Umbrella or Excess Liability Coverage Property damage, minimum of \$50,000

5. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
a. Owned/Leased Vehicles	
b. Non-Owned Vehicles	
c. Hired Vehicles	

- (e) The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY.
 - Upon receipt of notice from its insurer, Licensee will provide Licensor with thirty (30) days prior written notice of cancellation.
- (f) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the CITY. The CITY shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.
- (g) In addition to any other remedies the CITY may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this License Agreement.
- (i) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY of San Antonio for liability arising out of operations under this License Agreement.
- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.

- (k) The Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 9. SURETY BOND

- (a) **Duty to Obtain Bond** – CITY may request a bond if necessary. In such case, Licensee shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of the License Agreement. The surety bond must be:
 - (1) in an amount not less than \$100,000.00;
 - (2) issued by a surety company license to do business in the State of Texas; and
 - (3) under terms and conditions acceptable to the City Attorney.
- (b) **Time Period to Obtain Bond** – Licensee shall obtain this bond no later than the 30th day after the effective date of this License Agreement.
- (c) **Bond Does Not Limit Other Rights and Remedies** – The rights reserved to the Licensor under the bond are in addition to all other rights. No action, proceeding or exercise of a right regarding the bond shall affect the Licensor's rights to demand full and faithful performance under this License Agreement or limit the Licensee's liability for damages.

SECTION 10. ADMINISTRATION OF LICENSE

- (a) The City Manager or her designee is the principal CITY officer responsible for the administration of this License Agreement.
- (b) CHARTER shall communicate with the Chief Information/Technology Officer or his assignee on all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of CHARTER's Facilities in the CITY's Property and report any material changes to CHARTER's Facilities, excluding emergency repairs for the preservation of life or property when the necessity arises, provided that CHARTER shall notify the Chief Information/Technology Office or his assignee within twenty-four (24) hours of the emergency repairs.
- (c) Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to CITY shall be delivered as follows:

Director of Capital Improvements	City Clerk's Office
Management Services	City of San Antonio
Department	P.O. Box 839933
City of San Antonio	San Antonio, Texas 78283-3933
P.O. Box 839966	(210) 207-7253
San Antonio, Texas 78204	
(210) 207-8140	

Until any such change is made, notices to CHARTER shall be delivered as follows:

Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131-3660
Attn: Legal Operations

Charter Communications
1900 Blue Crest Lane
San Antonio, TX 78247
Attn: Area Vice President

- (d) Copies of petitions, applications, communications and reports submitted by CHARTER to the Federal Communications Commission or the Public Utility Commission of Texas concerning this License Agreement shall be provided to the CITY concurrently with the filing of such documents.

SECTION 11. RECORDS

- (a) CHARTER shall keep complete and accurate maps and records of its Communications System relating to this License Agreement. The CITY may require the keeping of additional records or maps which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in Facilities under this License Agreement.
- (b) The CITY may, at reasonable times and for reasonable purposes, examine, verify and review the documents, maps, plans and other records of CHARTER pertaining to the Facilities installed in the CITY Property. CHARTER shall make the above records available to the CITY for review within thirty (30) calendar days after requested by the Director or Chief Information/Technology Officer.

SECTION 12. COMPENSATION FOR USE OF CITY PROPERTY

In exchange for the use and occupancy of the CITY Property, CHARTER shall be required to allow and provide the following:

- (a) **Processing Fee.** CHARTER shall remit to the CITY a one-time processing fee of three thousand five hundred dollars (\$3,500.00), except as otherwise provided in subsections (b) and (c).

- (b) **CITY Property Access Fees.**

(1) The annual consideration amount for use of public right-of-way and CITY property for the purpose of installing aerial and/or subterranean fiber optic and related communications facilities is based on the fair market value of the CITY Property used by CHARTER. The licensed area must be as wide as the CHARTER will reasonably need to maintain the licensed facilities but not more than twenty (20) feet. The Chief Information/Technology Officer in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the CITY Property subject to this License Agreement, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. CHARTER will be responsible for paying the CITY Property appraisal separate from the processing fee. The Chief Information/Technology Officer will determine the fair market value based on the total number of square feet of CITY Property multiplied by the total number of per-linear-foot of the CITY Property area associated with the CHARTER's network footprint. An annual escalation factor of four (4) percent will

be applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to ten (10) of the license term and all renewal periods. At the discretion of the Chief Information/Technology Officer, *the CITY may negotiate in-kind contributions of equivalent value and in lieu of the fees in subsection (a) and this subsection (b).*

- (c) As provided for in subsection (b) of this Section 12, the CITY and CHARTER have agreed on an in-kind contribution of equivalent value of the total amount of fees set out in subsections (a) and (b) for the Term of the License Agreement, as further set out in **Exhibit C**.
- (d) The in-kind contribution will authorize CHARTER to install Facilities on CITY Property, but does not grant CHARTER the authority to use poles or other infrastructure of the CITY or utility agencies.
- (e) Following termination of this License Agreement for any reason, CHARTER must remove or otherwise dispose of all Facilities at its own expense within sixty (60) days. Failure to take this action will result in the Facilities being considered abandoned and the property of the CITY.

SECTION 13. ASSIGNMENT OF LICENSE AGREEMENT

The rights granted by this License Agreement inure to the benefit of CHARTER and this License Agreement shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the CITY, approved by passage of an ordinance. For the purposes of this Section, assignment, transfer, sale, disposal, merger or consolidation shall exclude an assignment or transfer to entities that control, are controlled by, or are under common Control with CHARTER. Any such consent by the CITY shall not be unreasonably withheld.

SECTION 14. FUTURE CONTINGENCY

Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, CHARTER and the CITY shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the CITY with a level of compensation comparable to that set forth in this License Agreement.

SECTION 15. VENUE AND GOVERNING LAW

- (a) VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THE LICENSE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES

CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS.

- (b) This License Agreement shall be construed in accordance with the CITY Charter and Municipal Code(s) in effect on the date of passage of this License Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 16. NON-BINDING MEDIATION

- (a) Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.
- (b) To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS at the request of a Party. Any mediator so designated must (shall) be acceptable to both Parties.
- (c) The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.
- (d) The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (e) Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

SECTION 17. WAIVER

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by CHARTER and CITY, as authorized by City Council by passage of an ordinance. Failure of either Party to require the performance of any term in this License Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

SECTION 18. SEVERABILITY

If any clause or provision of the License Agreement is illegal, invalid, or

unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the Parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this License Agreement that is illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

SECTION 19. CAPTIONS

The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

SECTION 20. EXTENT OF LICENSE AGREEMENT

This License Agreement, together with any attached exhibits and the authorizing ordinance, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this Agreement.

SECTION 21. AUTHORITY

The signer of this License Agreement for CHARTER hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the CHARTER.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

TIME WARNER CABLE TEXAS LLC
By: CHARTER COMMUNICATIONS,
INC., IT'S MANAGER

(Signature)

(Signature)

Printed Name: _____

Printed Name: _____

Title: **Chief Information/
Technology Officer**

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

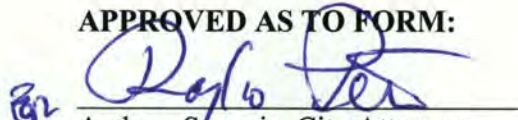

Andrew Segovia, City Attorney

Exhibit C

In Kind Contributions vs. Licensing Fee

The CITY through its Information Technology Services Department (ITSD) has reviewed the requirements of CHARTER agreeing to complete the installation of conduit on behalf of CITY. The established value of the work including fees is **\$216,786**.

The CITY through its Center City Development and Operations Department has conducted a valuation of the required 5,965 square foot area needed for the ten year license agreement with CHARTER. Based on a \$45 per square foot market value with a 6.5% return with an escalation factor of 4% over a ten year licensing period with a \$3,500 processing fee, the cost of the license is **\$212,978**.

SF/ Cost	Value	% Return	Base Annual Rate	Year 1 Fee	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
5965	\$268,425	6.50%	\$ 17,448	\$ 3,500	\$ 17,448	\$ 18,146	\$ 18,871	\$ 19,626	\$ 20,411	\$ 21,228	\$ 22,077	\$ 22,960	\$ 23,878	\$ 24,833	\$212,978
\$ 45															

As provided for in Section 12 between CITY and CHARTER, the in-kind contributions by CHARTER are in excess of the proposed total licensing fee for the Term of the License Agreement.