

ORDINANCE NO. 709

CITY OF SHAKOPEE CABLE TELEVISION FRANCHISE ORDINANCE

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FRANCHISE ORDINANCE

This Franchise, made and entered into this 20<sup>th</sup> day of July, 2004, by and between the City of Shakopee ("City"), a municipal corporation of the State of Minnesota, and Time Warner Cable Inc., d/b/a Time Warner Cable ("Grantee").

WITNESSETH

WHEREAS, Grantee has operated a Cable System in the City pursuant to a cable franchise ordinance ("Franchise"); and

WHEREAS, Grantee has requested renewal of its Franchise and has upgraded its System to a modern design as described herein at substantial cost; and

WHEREAS, the City is authorized to renew or grant one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a Cable Television System within the City and replace the Franchise, including amendments and agreements relating to it, beginning with the effective date of this renewed Franchise.

WHEREAS, the City, reviewed the legal, technical and financial qualifications of Grantee and after proper public notice, has determined that it is in the best interest of the City and its residents to renew its Franchise with Grantee,

NOW, THEREFORE, the City hereby grants to Grantee renewal of its Franchise in accordance with the provisions of the Shakopee City Code and this Ordinance.

SEC. 1. RENEWAL OF GRANT OF FRANCHISE.

This Franchise supercedes and replaces the franchise previously held by Grantee, including Ordinance Nos. 100, 164, 166, 194, 242, 308, 344, 453, and 641, and all other amendments thereto, together codified as City Code, Chapter 15 and Chapter 25.06.

This Franchise constitutes a nonexclusive grant of authority to Grantee to construct, maintain, extend, and operate a Cable System to provide Cable Service and other lawful service in Rights-of-Way in the City. Grantee's rights are subject to the police powers of the City. Grantee shall comply with any City ordinances of general applicability governing use of Right-of-Way and all generally applicable building, electrical and zoning codes currently or hereafter in force in the City. Grantee shall further comply with all state and federal laws, rules, and regulations applicable to the operation of Cable Systems or the provision of Cable Service. In the event of any conflict between the terms and conditions of this Franchise and any generally applicable ordinance including the Right-of-Way ordinance, the terms of such generally applicable ordinance shall control.

This Franchise complies with the Minnesota franchise standards set forth in Minn. Stat. § 238.084.

## SEC. 2. SHORT TITLE.

This Franchise shall be known and cited as the "City of Shakopee Cable Franchise." Within this document it shall also be referred to as "this Franchise" or "the Franchise."

## SEC. 3. DEFINITIONS.

For the purpose of this Franchise, 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 tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Access Channel" means a video channel provided by Grantee to permit cable casting of public, educational, governmental and other public interest programming.

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7).

"Cable Act" means the Cable Communications Policy Act of 1984 (codified at 47 U.S.C. §§ 521-611), as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as may, from time to time, be amended.

"Cable Service" or "Service" means: the one-way transmission to Subscribers of (i) video programming and/or (ii) other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Cable System" or "System" means a system which operates the service of receiving and amplifying video programs broadcast by one or more television stations and other programs, and distributing those programs by wire, cable, microwave or other means, whether the means are owned or leased, to persons who subscribe to the service.

"Channel" means a portion of the electromagnetic spectrum or fiber optic capacity that is capable of carrying one video signal, in either analog or digital form.

"City" means the City of Shakopee, Minnesota.

"Converter" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate

Channel selector, permits a Subscriber to view all authorized Subscriber signals delivered at designated converter dial locations.

“Drop” means the cable that connects the ground block to the nearest feeder cable of the System.

“FCC” means the Federal Communications Commission or a designated representative.

“Franchise” means this Cable Franchise Ordinance and the rights and obligations extended herein by the City to the Grantee to own, lease, construct, maintain, or operate a Cable System in the Rights-of-Way in the City for the purpose of providing Cable Services.

“Franchise Fee” means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on the Grantee solely because of its status and activities as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs that are required by the Franchise to be incurred by the Grantee for PEG Access equipment and facilities or the provision of “dark fiber”; (iv) requirements or charges incidental to the award or enforcement of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (v) any fee imposed under Title 17 of the United States Code.

“Grantee” means Time Warner Cable Inc. or its lawful successors, transferees, or assignees.

“Gross Revenues” means all revenues received directly or indirectly by the Grantee, arising from or in connection with the provision of Cable Service in the City including subscriber revenues (including pay TV), franchise fees, advertising income, home shopping program revenues and rentals of subscriber equipment, accounted for as earned in accordance with generally accepted accounting principles. Grantee is not required to include revenues recorded as earned but which are deemed uncollectible, but it must include recoveries previously deemed uncollectible. This definition of gross revenues also does not include sales, excise or other taxes collected by Grantee on behalf of federal, state, county, city or other governmental unit. Funds collected by Grantee to support public, educational and governmental access programming are also excluded from the definition of gross revenues.

“Lockout Device” means a mechanical or electrical accessory to a Subscriber’s terminal that inhibits the video or audio portions of a certain program or certain Channel(s) provided by way of a Cable System.

“Person” means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

“Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units. Right-of-Way does not include the airwaves above a Right-of-Way with regard to wireless or other nonwire telecommunications or broadcast service.

"Subscriber" means any Person who or which elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Franchise Agreement.

**SEC. 4. EFFECTIVE DATE AND TERM OF RENEWAL.**

This Franchise shall commence on the effective date described in Section 20 and shall expire fifteen (15) years thereafter.

**SEC. 5. WRITTEN NOTICE.**

All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator of this Franchise or via registered or certified mail postage prepaid thereon, addressed to the party to which notice is being given, as follows:

If to City:                   City Administrator  
                                  City of Shakopee  
                                  129 South Holmes Street  
                                  Shakopee, MN 55379

If to Grantee:               Division President  
                                  Time Warner Cable  
                                  801 Plymouth Avenue N.  
                                  Minneapolis, MN 55411

With a copy to: Vice-President, Govt. Affairs  
                                  Time Warner Cable  
                                  801 Plymouth Avenue N.  
                                  Minneapolis, MN 55411

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

**SEC. 6. DESIGN PROVISIONS.**

6.1     System Design.

- A.     Grantee has constructed and will provide for the term of this Franchise a System with at least a capacity of 750 MHz with the capability of providing a minimum of 75 channels of video programming. Grantee's System shall comply with the FCC's technical standards (47 CFR 76.601 to 76.617), as may be amended or modified from time to time.

- B. City shall have the right to inspect all System construction work performed by Grantee.

6.2 **Service to Schools and Government Buildings.**

- A. Grantee shall provide one outlet, one Converter, if needed, and Basic Service and the most highly penetrated tier of Cable Programming Service to those facilities identified in Exhibit A.
- B. If, after the effective date of this Franchise, a facility is constructed or relocated at a site that is over one hundred and twenty five (125) feet from Grantee's then existing System (i.e. requiring a drop in excess of 125 feet), the facility shall be responsible for all equipment, construction costs and additional wiring beyond the first one hundred and twenty five (125) feet. The first one hundred and twenty five (125) feet shall be Grantee's responsibility.
- C. All internal wiring cost beyond the one outlet that Grantee agrees to provide shall be the responsibility of the school or municipality.
- D. The financial responsibility for any additional Converters desired by the school or municipality shall be their responsibility.
- E. Notwithstanding section 6.2A above, Red Oak and Sun Path elementary schools will contribute three thousand dollars (\$3,000.00) toward the cost of the Grantee's extension of service to such schools.

6.3 **Lockout Device.**

Grantee shall provide, for sale or lease, a Lockout Device to Subscribers, upon request.

6.4 **Standby Power.**

Grantee shall maintain standby power at the headend and any hubs.

6.5 **Periodic Review Provisions.**

The City may request a performance review at the fifth and tenth anniversaries of this Franchise. In conducting such reviews, the City shall undertake the following process:

- A. The City and the Grantee shall undertake a review of the Cable System and Franchise. This review shall, at a minimum, take into account the following:
  - 1. Characteristics of the existing System;

2. The state-of-the-art;
  3. Additional benefits provided to customers by System improvements;
  4. The market place demand for System improvements; and
  5. The financial feasibility of System improvements taking into account the cost.
- B. The City shall hold a public hearing to enable the general public and Grantee to comment and to present evidence.
- C. As a result of any review based on this Section, the City may request that the Grantee enter into good faith negotiations to amend this Franchise as necessary.

#### 6.6 Dark Fiber

Grantee will install and maintain two dark fibers between the Vierling Fire Station and Shakopee Senior High School for continuous City use. City shall reimburse Grantee's actual installation costs up to a total of eleven thousand dollars (\$ 11,000.00), with the balance of the costs being the responsibility of Grantee. City shall be responsible for any and all end user equipment necessary to light or use the fiber connection.

### SEC. 7. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS PROGRAMMING.

#### 7.1 Access Channels.

- A. Grantee shall provide three (3) Access Channels. These channels shall be provided in addition to carriage of Regional Channel Six. The City shall, in its discretion, program and operate the Access Channels cablecast on the System.
- B. The Access Channels are currently located at the following channel designations: 14, 15, and 16. In the event the Grantee changes the Access Channel designations (numbers), the Grantee shall, to the extent possible, provide sixty (60) days prior written notice of such change(s) to the City. In addition, the Grantee shall provide reasonable notice of such change(s) to Subscribers via, for example, bill stuffers or a channel crawl.
- C. Grantee shall provide to each of its Subscribers who receive all or any part of the total Cable Services offered on the System, reception of each Access Channel.
- D. Grantee shall provide at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial

and noncommercial users. This Section is not applicable to Subscribers receiving only alarm system services or only data transmission services for computer operated functions. The VHF spectrum shall be used for at least one of the specially designated noncommercial public Access Channels required.

- E. Whenever any of the Access Channels are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive three hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, Grantee shall then have six months in which to provide a new specially designated access channel for the same purpose at no additional cost to Subscribers.
- F. City shall, at times throughout the life of this Franchise, maintain in place rules governing the use of Access Channels on the System and make the Access Channels and programming equipment available for public, educational, and governmental access ("PEG Access") programming as City deems appropriate.

7.2 Funding for PEG Access.

- A. Grantee shall collect Forty cents (\$.40) per Subscriber, per month and shall remit said amounts collected to the City on a quarterly basis to be used solely for PEG Access. Such amounts are separate from and in addition to Franchise Fees. Grantee shall have no additional obligation for PEG Access equipment maintenance or studio support, including rent reimbursement.
- B. In the event that other franchise(s) is/are approved by the City, the other grantee(s) shall be subject to the same requirements for the funding of PEG Access as the Grantee herein.

7.3 Regional Channel Six.

Standard VHF Channel six (6) shall be designated for usage as a regional channel, currently known as Metro Cable Network, and shall be made available to Subscribers without charge except for the applicable Basic Service fee. This provision shall remain in effect as long as a regional channel is required by state law.

7.4 Live Cablecast Origination Points.

Grantee shall ensure that its System is constructed and configured to permit the City or its designee to continue to insert live programming, replay recorded programming, or transmit character generated programming from the existing locations at City Hall, the Community Center and Central Elementary. The City may designate an alternative site(s) to replace one or more of the existing sites listed above from which live programming, replay programming or transmit character generated programming may be inserted; provided, however, that the City shall be solely



responsible for, and shall reimburse the Grantee for, any and all costs (including, but not limited to, time and materials, reasonable overhead costs, permitting fees, additional pole attachment fees, etc) incurred by the Grantee in providing this service to such alternative site(s). The Grantee may require payment in advance (subject to a true-up upon completion of the work). Following receipt of the payment the Grantee shall commence any necessary work and the alternative site shall be made available to the City within a reasonable period of time (taking into accounts such factors as the amount of or nature of the work to be done, weather conditions, permitting delays, utility make-ready, etc.). The Grantee shall have no obligation to provide more than three (3) live origination sites at any one time. Any written notice from the City designating an alternative live origination site shall also designate the origination site being replaced. Upon activation of the newly designated origination point the Grantee shall have no further responsibility for the origination site being replaced.

#### SEC. 8. PERIODIC CUSTOMER SURVEYS.

- 8.1 The Grantee shall, upon request of the City and at times mutually agreed upon by the parties, but no more frequent than once every three years, conduct a random survey of a representative sample of Subscribers. Each questionnaire shall be prepared and conducted in good faith so as to provide a reasonably reliable measure of customer satisfaction with: (1) audio and signal quality; (2) response to customer complaints; (3) billing practices; (4) programming; and (5) installation practices;
- 8.2 The survey shall be conducted in conformity with standard research procedures conducted by an independent person in the business of regularly conducting such surveys. The survey shall consist of a sample size sufficient to yield a margin of error of plus or minus six percent or less of the total customer base.
- 8.3 The Grantee shall report the results of the survey and any steps the Grantee may be taking in response to the survey within 60 days of the completion of the survey.
- 8.4 Notwithstanding anything to the contrary, the Grantee shall be under no obligation to conduct a survey at any time the Grantee is deemed subject to effective competition under then applicable state or federal law.

#### SEC. 9. LINE EXTENSION POLICY.

- 9.1 Upon the effective date of this Franchise, the Grantee shall offer Service to all areas of the City. The Grantee shall extend the System to any residences within the City requesting Service provided there are at least thirty (30) homes per mile of required new System construction (or the equivalent thereof), and the requesting residence is within 125 feet of the System as extended.
- 9.2 In those instances involving an extension of the Cable System to areas not meeting the minimum density of thirty (30) homes per mile (or the equivalent thereof), the Grantee will extend the System and bear that portion of the cost of extending the

Cable System to areas not meeting the minimum density and the requesting Subscribers shall bear the incremental cost. As an example, if the density in an area were fifteen (15) homes per mile, the Grantee would pay one-half (1/2) of the costs of extending the Cable System and those Persons requesting Cable Service would pay the remaining one-half (1/2).

- 9.3 In those instances involving Drops in excess of 125 feet, the Grantee shall bear that portion of the cost of constructing the first 125 feet and the requesting Subscriber shall bear the remainder.
- 9.4 The City recognizes that in some instances the Grantee may need the permission of private property owners to extend Service. If the Grantee is unable to obtain such permission on reasonable terms, the Grantee shall be under no obligation to extend Service.
- 9.5 Attached hereto is as Exhibit B is a map of Grantee's System as of the effective date of this Franchise.

#### SEC. 10. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

##### 10.1 Payment to City.

- A. Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues.
- B. The foregoing payment shall be compensation for use of the Rights-of-Way.
- C. Payments due the City under this provision shall be computed at the end of each calendar quarter. Payments shall be due and payable for each quarter not later than 60 days from the last day of the quarter. Each payment shall be accompanied by a brief report showing the basis for the computation.
- D. In addition to Cable Service, the Grantee (either by itself or through one or more affiliates) may provide information and telecommunications services. For purposes of calculating the Franchise Fee when the Grantee packages or "bundles" Cable Services with other services not subject to franchise fees, the Grantee shall allocate revenues and compute the Franchise Fee due pursuant to this Franchise in accordance with EITF 00-21 or such subsequently issued generally accepted accounting principles ("GAAP") which amend or supercede EITF 00-21, or as otherwise required by applicable law. In the event EITF 00-21 is amended or superceded, the Grantee will notify the City of such change in its Franchise Fee report required by Section 10.1C.
- E. No acceptance of any Franchise Fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for

further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City. For purposes of conducting such an audit, the City or its agents may inspect Grantee's books or records relating to calculation of Gross Revenues and Franchise Fees upon ten (10) days written notice.

- F. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate of 12%.
- G. The requirements herein in no way modify or limit the parties' agreement dated December 17, 2002 entitled, "Settlement Agreement" relating to Time Warner Cable transfer.
- H. Notwithstanding anything to the contrary, Grantee shall be entitled to a credit on Franchise Fee payments to the City for any fees charged for or associated with installation of Drops in the City. No credit shall be given for permit fees associated with trunk, mainline or feeder cable unless so provided under applicable state or federal law.

## 10.2 Bonds.

- A. At the commencement of this Franchise, Grantee shall maintain with City a performance bond in the sum of \$50,000 in such form conditioned upon the faithful performance by Grantee of this Franchise.
- B. The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.
- C. City may, in its sole discretion, reduce the amount of the bond.

## 10.3 Security Fund.

- A. In the event the Grantee is given notice of a material non-compliance with this Franchise pursuant to Section 10.3F of this Franchise, upon reasonable request from City, the Grantee shall within ten (10) days thereof deposit into a bank account, established by the City, and maintain on deposit the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) or deliver to the City a letter of credit in such amount which shall be a Security Fund for the faithful performance by it of all the material provisions of this Franchise which are subject of such notice. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. Grantee will be provided, at a minimum, due process and opportunity to cure as set forth herein or as otherwise provided in applicable law. The security may be terminated by the Grantee upon the Resolution of the alleged non-compliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established whenever Grantee is given the notice required, even if Grantee disputes the allegation that it is not in compliance.

- B. Provision shall be made to permit the City to withdraw funds from the Security Fund. 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 purpose.
- C. Within ten (10) days after notice to it that any amount has been withdrawn by the City from the Security Fund pursuant to (A) of this section, Grantee shall deposit a sum of money sufficient to restore such Security Fund to the required amount.
- D. 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 which are the subject of the notice set forth in Section 10.1 A, City in its sole discretion may charge to and collect from the Security Fund \$100 per day for each day, or part thereof, for non-compliance with any material provision of this Franchise.
- E. If Grantee fails to pay to the City any generally applicable 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 30 days notice of such failure by the City, to comply with any material provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the Security Fund. Payments are not Franchise Fees as defined in Section 10.1 of the Ordinance.
- F. Whenever the City has reason to believe that Grantee has allegedly violated one or more material terms, conditions or provisions of this Franchise for which an enforcement action is to be considered, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have 30 days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of penalties, and further to enforce payment of penalties through the Security Fund.
- G. Grantee may, within 10 days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time. The City shall hear Grantee's dispute at the next regularly scheduled or specially scheduled Council meeting or at another time mutually agreed upon by the parties. Grantee shall be entitled to the right to require the production of evidence and to question witnesses. The City shall determine if Grantee has

committed a violation and shall make written findings of fact relative to its determination.

- H. If after hearing the dispute, the claim is upheld by the City, then Grantee shall have 30 days within which to remedy the violation before the City may require payment of all penalties due it or the Grantee may appeal such decision to a court of competent jurisdiction.
- I. The time for Grantee to correct any alleged violation shall be extended by the City if the necessary action to correct the alleged violation is of such a nature or character as to require more than 30 days within which to perform, provided Grantee commences corrective action within 15 days and thereafter uses reasonable diligence, as determined by the City, to correct the violation
- J. If City draws upon the Security Fund delivered pursuant hereto, in whole or in part, Grantee shall replace the same within three days and shall deliver to City a like replacement Security Fund for the full amount stated in Paragraph A of this section as a substitution of the previous Security Fund.
- K. If any Security Fund is not so replaced, 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 so replace any Security Fund may also, at the option of City, be deemed a default 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 default.
- L. The collection by City of any damages, monies or penalties 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.
- M. No penalty or sanction of any kind, including revocation or termination, may be imposed when the action or omission is due to acts of God or reasons beyond the control of the Grantee.

## SEC. 11. RATES.

Current subscriber rates and the standard form of subscriber contracts shall be available for inspection at all times. The City reserves the right to regulate rates to the extent provided by law.

## SEC. 12. COMPETITION ADJUSTMENT.

### 12.1 Additional Franchises.

This Franchise is nonexclusive. The City shall not grant a Franchise to another Grantee to operate a Cable System on terms and conditions which are less burdensome or more favorable than the terms and conditions of this Franchise.

### 12.2 Competition.

A. If another Multichannel Video Programming Distributor operates in the City's rights-of-way without City authorization, either in the form of a Franchise or other legally required authorization, and the City has clear and express authority under applicable laws to mandate a Franchise or other legally required authorization on that Multichannel Video Programming Distributor but fails to do so, then Grantee shall not be required to comply with those terms of this Franchise which are not also imposed upon the Multichannel Video Programming Distributor.

B. If the City makes a decision to commence construction and operation of a Cable System in the City, or should construction of a Cable System by the City commence without an identifiable final decision, then Grantee may seek modification of this Franchise as of the date of the final decision to commence construction and operation, or at the commencement of construction if it begins without an identifiable final decision, in the manner described below:

1. Notwithstanding any provision to the contrary contained in this Franchise, Grantee shall not be required to provide the City with proprietary information or to respond to requests for information that require it to release proprietary information where it reasonably believes that the release of such information would provide the City a competitive advantage.
2. Any audits of Franchise Fees must be conducted by an independent auditor who has agreed in advance in writing not to disclose any portion of Grantee's books and records or other proprietary information to the City, other than the aggregate amount of Gross Revenues (without disclosing the amounts of underlying categories of Gross Revenues) used to calculate the Franchise Fees payable hereunder; and
3. If Grantee shall be required to move, relay, or relocate any of its facilities in connection with the construction or preparation for construction of a Cable System by the City (regardless of whether any such removal, relaying, or relocation is required under the terms of this Franchise, or under any applicable pole attachment agreement to which Grantee and the City are parties), then the City shall be obligated to pay all of Grantee's reasonable costs for labor and materials to effect such work.

If the City and Grantee cannot mutually agree on appropriate modifications

to this Franchise as outlined above, Grantee may seek resolution of such matter in a court of competent jurisdiction.

**SEC. 13 REPAIRS AND MAINTENANCE/CONSUMER PROTECTION.**

Consumer Complaints. Any person may file complaints regarding quality of service, equipment malfunction, billing disputes, or other matters pertaining to the Cable System by contacting the Grantee during normal business hours.

- A. Local Office. Grantee shall maintain a customer payment center in the City, or within twelve (12) miles of the City's northern border, which shall permit Subscribers to pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services.
- B. Repairs and Maintenance. Grantee shall maintain a publicly listed toll-free or local telephone line. Calls about Service problems during normal business hours will be handled by the Grantee's Customer Service Representatives (CSRs). When possible, problems will be resolved over the phone. Subscribers may be charged for on-site service calls.
- C. Grantee shall, at all times, comply with the FCC rules regarding customer service. A copy of the current rules is set forth as Exhibit C. The City reserves and does not waive its rights, if any, to adopt additional or modified consumer protection requirements. Grantee reserves the right to challenge any additional or modified requirements including City's right to adopt such requirements.

**SEC. 14 SUBSCRIBER PRIVACY**

The following provisions regarding subscriber privacy shall govern unless otherwise governed under federal law. No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purposes of monitoring individual viewing patterns or practices.

- A. No information or data obtained by monitoring transmission of a signal from a subscriber terminal or any other means, including but not limited to

lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, or to the subscriber who is the subject of that information, unless Grantee has received specific written authorization from the subscriber to make such data available.

- B. Written permission from the subscriber shall not be required for conducting system wide or individually addressed electronic sweeps for the purpose of verifying Cable System integrity or monitoring for the purpose of billing. Such information shall be kept confidential by Grantee, consistent with clause 1 of this section.
- C. For the purposes of this provision, a Class IV cable communications channel means a signaling path provided by Cable System to transmit signals of any type from a subscriber terminal to another point in the communications system.

**SEC. 15 INDEMNIFICATION AND LIABILITY INSURANCE.**

- A. The Grantee shall indemnify and hold harmless the City, the City Council and all City employees and commissions, from any suit, claim or demand whatsoever which may be asserted or recovered against it based upon or arising out of the exercise of this Franchise or Grantee's construction, maintenance, or operation of the System or any part thereof provided that such suit, claim, or demand is not based upon the City's own intentional or negligent conduct. The City agrees to notify Grantee, in writing and within forty-eight hours, (unless notification within forty-eight hours would be unreasonable due to extraordinary circumstances), of any claim or suit against the City for which Grantee may be required to indemnify the City. In the event Grantee is required to defend the City in connection with this section, the City agrees to tender control of its defense to Grantee and Grantee shall have the right to select defense counsel. The City agrees to cooperate in its own defense. Nothing herein waives or restricts any limitation on City's liability pursuant to Minnesota Statutes 466.
- B. Liability insurance - Grantee shall maintain throughout the term of this Franchise public liability, property damage and liability insurance policies naming the City, the City Council and all City employees and commissions, as named additional insureds. :

\$1,000,000.00 for property damage to any one person,  
\$1,000,000.00 for property damage in any one occurrence,  
\$1,000,000.00 for bodily injury to any one person,  
\$1,000,000.00 for bodily injury in any one occurrence,



The insurance shall be obtained from a company licensed to do business in Minnesota. The Grantee shall provide a certificate of coverage to the City. The policy shall state that the City shall be notified in writing by the insurer 30 days in advance of any cancellation or termination of any such policy.

**SEC. 16 ADMINISTRATION.**

The Shakopee City Administrator is responsible for the continuing administration of the Franchise.

**SEC. 17 REDRESS.**

In the event the Grantee fails to perform and carry out any material provision of this Franchise, attempts to evade the provisions of the Franchise, or practices fraud or deceit upon the City (collectively, a "Breach") the City may enforce or terminate the Franchise. The City shall give Grantee written notice of the specific provision(s) violated or that Grantee has failed to perform. After written notice has been given to the Grantee, the Grantee shall have 30 days time in which to remedy any failure. If the Grantee has not cured any failure upon the expiration of the 30-day period, the City may take such steps as it deems necessary to enforce the Franchise; provided, however, that before the Franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council to contest the City's determination.

**SEC. 18 TRANSFER OR ASSIGNMENT.**

- A. "Fundamental corporate change" means the sale or transfer of a majority of a corporation's assets; merger, including parent and its subsidiary corporation; consolidation; or creation of a subsidiary corporation.
- B. A sale or transfer of this Franchise, including a sale or transfer by means of a fundamental corporate change, or a mortgage, lease, or assignment of the Franchise, requires the prior written consent of the City by resolution of the Council in accordance with all terms and conditions set forth in said resolution, which consent shall not be unreasonably withheld. This provision shall not prohibit the use of the System as collateral for loans.
- C. Notwithstanding the foregoing, for purposes of permitting internal corporate restructuring or consolidation, the City hereby consents to any sale or transfer of this Franchise to any Person controlling, controlled by or under common control with the Grantee. For purposes of this paragraph, the word "control" means the authority to make or exercise decisions regarding the day-to-day operation of the business (i.e. decisions regarding programming, rates, customer service, etc.).

SEC. 19 RIGHT TO PURCHASE.

- A. If the System is offered for sale, the City shall have the non-exclusive right to purchase the System under the following conditions:
  - 1. Grantee shall immediately notify the City in writing in the event it receives an offer from a third party to purchase the System. Within 30 days after the City receives such notice, the City shall notify Grantee whether the City intends to purchase the System.
  - 2. If the City elects to purchase the System, the price, terms and conditions of the City's purchase shall be the same as those set forth in the offer. If the City fails to offer to purchase the System on terms and conditions which match or exceed those of the offer within 30 days after the City receives notification of the bona fide offer, then Grantee is free to sell the System.
  - 3. The City's rights pursuant to this section are not triggered by the sale or transfer of stock that creates a new controlling interest in the Grantee and are not triggered by any fundamental corporate change in the Grantee.

SEC. 20. ACCEPTANCE SECTION.

- A. Grantee shall accept this Franchise within 30 days of adoption by City. Such acceptance by Grantee shall be deemed the grant of this Franchise for all purposes.
- B. Upon acceptance of this Franchise, the prior Franchise shall be replaced and Grantee shall be bound by all the terms and conditions contained in this Ordinance.
- C. At the time of acceptance, Grantee shall provide a copy of its initial services which shall be attached hereto as Exhibit D .
- D. The effective date of this Franchise shall be the date set forth below.

SEC. 21. MISCELLANEOUS

- A. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance.
- B. Upon request, the Grantee shall:

1. allow the City, where necessary for the enforcement of this Franchise or to evaluate Grantee's compliance with this Franchise, to inspect its books and records related to operation of the System including communications or filings with regulatory authorities;
  2. furnish to City such additional reports with respect to System operations as may be necessary to ensure Grantee's compliance with this Franchise.
- C. Both the City and Grantee expressly reserve any and all rights that either may now have or be hereafter granted under applicable state and federal law. Nothing in this Franchise shall be deemed to be or construed as a waiver, right, release or surrender of any right by the City or the Grantee.

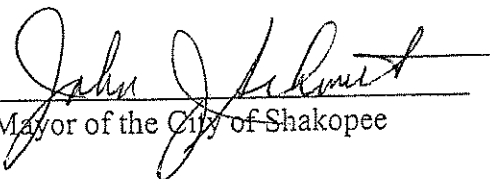
**SEC. 22. SUMMARY** Summary Approved. The City Council hereby determines that the text of the summary ordinance marked "Official Summary of Ordinance 709," a copy of which is attached hereto, clearly informs the public of the intent and effect of the ordinance. The Council further determines that publication of the title and such summary will clearly inform the public of the intent and effect of the ordinance.

**SEC. 23. POSTING AND FILING** A copy of this ordinance is filed in the office of the City Clerk and a copy is provided to the Shakopee Public Library for posting and filing, at which locations a copy is available for inspection by any person during regular business hours.

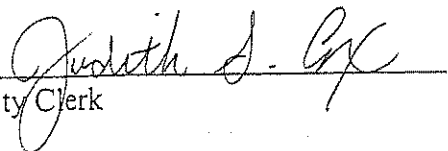
**SEC. 24. TITLE** The City Clerk shall publish the title of this ordinance and the official summary in the official newspaper with notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the City Clerk and Shakopee Library.

**SEC. 25. EFFECTIVE DATE** This ordinance becomes effective from and after its passage and publication.

Adopted in adj. reg. session of the City Council of the City of Shakopee, Minnesota, held this 20<sup>th</sup> day of July, 2004.

  
\_\_\_\_\_  
Mayor of the City of Shakopee

ATTEST:

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

IN WITNESS WHEREOF, Grantee has executed this Franchise the date and year first above written.

TIME WARNER CABLE INC.  
D/B/A/ TIME WARNER CABLE.

By *[Signature]*

Date: 7/27/04

(Corporate Seal)

STATE OF Minnesota )  
COUNTY OF Scott )

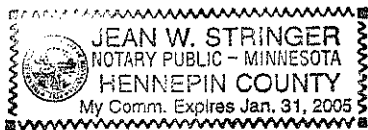
The foregoing instrument was acknowledged before me on Aug. 10, 2004,  
by John J. Schmitt the Mayor of the City of Shakopee, on behalf of the  
City.



*[Signature]*  
Notary Public

STATE OF Minnesota )  
COUNTY OF Hennepin )

The foregoing instrument was acknowledged before me on 7-27, 2004,  
by Michael C. Munley the President of Time Warner Cable Inc., d/b/a Time  
Warner Cable, on behalf of the company.



*[Signature]*  
Notary Public

## Official Summary of Ordinance No. 709

The following is the official summary of Ordinance No. 709, renewal of the Time Warner Cable Franchise, approved by the City Council of the City of Shakopee, Minnesota on July 20, 2004.

### Ordinance No. 709 – Renewal of the Time Warner Cable Franchise

1. Franchise Term- Time Warner has been issued a 15-year franchise term.
2. Institutional Network (I-Net)- Time Warner has agreed to maintain the current live video feeds from City Hall, the Community Center, and Central Elementary.

In addition to the live cablecast origination points at City Hall, Community Center and Central Elementary, Time Warner would also provide two dark fibers connecting Vierling Fire Station and the High School.

3. PEG Access Support (Public, Educational, Government)- Under the prior franchise, Time Warner was required to provide three PEG access channels, equipment, and facilities and to manage PEG access programming and production. One channel is used for government services like broadcasting City Council meetings, one for public purposes to broadcast community events or public service announcements and one for education to broadcast educational activities.

TW has agreed to continue the .40/subscriber PEG fee; however, is unwilling to continue the rent and equipment maintenance grants.

4. Service to Public Institutions – Public schools, municipal buildings and SPUC will receive free cable service. Institutions like County buildings, hospitals, churches and the like have been removed.

Time Warner is willing to extend plant 125 feet to accommodate new or relocated sites. This language will help us with future understandings with new or relocated buildings and as in accordance with FCC guidelines.

Time Warner has agreed to hook-up both Sun Path and Red Oak for \$3,000, which will be the responsibility of the school district. The library will be hooked up for FREE and the police department for \$8,288.

5. Customer Service- The prior franchise contained detailed customer service obligations. Time Warner seeks to be obligated to comply with the FCC's customer service standards.
6. Drop Fees– Time Warner will subtract the amount of drop fees from the franchise revenue the city receives.
7. Local Office- Time Warner will maintain a customer service office 12 miles of the city's northern border.
8. Franchise Fees – The city will continue to receive 5% of gross revenues from Time

- Warner on cable services, not information services like cable modems. The city will also receive .40/customer/month for public, educational and government purposes. (PEG)
9. Bundling Standard – Time Warner will comply with GAAP section EITF 00-21 when offering bundling and/or discounted information, telecommunication and cable services to Shakopee residents to ensure a fair and equitable method of calculation.

A printed copy of the ordinance is available for inspection by any person at the office of the City Clerk and the Shakopee Public Library.

**EXHIBIT A**  
**CABLE SERVICE TO INSTITUTIONS**

Grantee shall provide a Drop, outlet and Basic Service and the most highly penetrated cable programming service tier at no cost to each of the following institutions:

- Shakopee High School
- Shakopee Jr. High School
- All Public Elementary Schools
- Shakopee City Hall
- Shakopee School District Service Center
- Shakopee Public Library
- Shakopee Fire Stations
- Shakopee Police Station
- Shakopee Public Works
- Shakopee Public Utilities Commission Headquarters
- Shakopee Senior Citizen High Rise (to the Common Room; subject to Grantee securing an acceptable easement)
- Shakopee Community Center
- Shakopee Community Center Studio

As referenced in Section 6.2(B), if any of the above facilities is over one hundred and twenty five (125) feet from Grantee's then existing System (i.e. requiring a drop in excess of 125 feet), the facility shall be responsible for all equipment, construction costs and additional wiring beyond the first one hundred and twenty five (125) feet. The first one hundred and twenty five (125) feet shall be Grantee's responsibility.

Cable Service provided herein shall be utilized for non-commercial purposes. Users shall hold the Grantee harmless from any and all liability or claims arising out of their use of Cable Service, other than for those claims arising out of improper installation or faulty equipment.

EXHIBIT B  
SERVICE AREA MAP



EXHIBIT C  
FCC CUSTOMER SERVICE STANDARDS

§76.309 Customer service obligations.

(1) Cable system office hours and telephone availability --

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers --

(i) Refunds -- Refund checks will be issued promptly, but no later than either --

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits -- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions --

(i) *Normal business hours* -- The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) *Normal operating conditions* -- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are *not* within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which *are* ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) *Service interruption* -- The term "service interruption" means the loss of picture or sound on one or more cable channels.

# EXHIBIT D TIME WARNER PROGRAMMING

2004 Time Warner Entertainment Company, L.P. All Rights Reserved. © 2004 Time Warner Entertainment Company, L.P. All Rights Reserved.

Line	Channel	Time	Day	Program	Category	Start	End	Duration	Notes
1	10	10:00	MTWTFSS	10:00	10:00	10:00	10:00	10:00	
2	11	11:00	MTWTFSS	11:00	11:00	11:00	11:00	11:00	
3	12	12:00	MTWTFSS	12:00	12:00	12:00	12:00	12:00	
4	13	13:00	MTWTFSS	13:00	13:00	13:00	13:00	13:00	
5	14	14:00	MTWTFSS	14:00	14:00	14:00	14:00	14:00	
6	15	15:00	MTWTFSS	15:00	15:00	15:00	15:00	15:00	
7	16	16:00	MTWTFSS	16:00	16:00	16:00	16:00	16:00	
8	17	17:00	MTWTFSS	17:00	17:00	17:00	17:00	17:00	
9	18	18:00	MTWTFSS	18:00	18:00	18:00	18:00	18:00	
10	19	19:00	MTWTFSS	19:00	19:00	19:00	19:00	19:00	
11	20	20:00	MTWTFSS	20:00	20:00	20:00	20:00	20:00	
12	21	21:00	MTWTFSS	21:00	21:00	21:00	21:00	21:00	
13	22	22:00	MTWTFSS	22:00	22:00	22:00	22:00	22:00	
14	23	23:00	MTWTFSS	23:00	23:00	23:00	23:00	23:00	
15	24	24:00	MTWTFSS	24:00	24:00	24:00	24:00	24:00	
16	25	25:00	MTWTFSS	25:00	25:00	25:00	25:00	25:00	
17	26	26:00	MTWTFSS	26:00	26:00	26:00	26:00	26:00	
18	27	27:00	MTWTFSS	27:00	27:00	27:00	27:00	27:00	
19	28	28:00	MTWTFSS	28:00	28:00	28:00	28:00	28:00	
20	29	29:00	MTWTFSS	29:00	29:00	29:00	29:00	29:00	

612-552-2000 www.time Warner.com

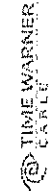




EXHIBIT D  
TIME WARNER PROGRAMMING

