

Upon motion by John H. Groh, seconded by Richard P. Figaski, the following Ordinance was duly enacted, 2 voting in favor of enactment, 0 voting against enactment.

ORDINANCE NO. 2015-15

An Ordinance approving and authorizing execution of a Cable Franchise Agreement between Millcreek Township and Time Warner Cable Midwest LLC, d/b/a Time Warner Cable.

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, the regulations of the Federal Communications Commission and Pennsylvania law, the Township of Millcreek (hereinafter the "Township") is authorized to grant franchises to construct, operate and maintain a cable system utilizing public rights-of-way and properties within the Township's jurisdiction; and

WHEREAS, Time Warner Cable Midwest LLC d/b/a Time Warner Cable ("Time Warner") currently holds a cable franchise from the Township originally granted to TCI of Pennsylvania, Inc.; and

WHEREAS, Time Warner has requested that the Township renew Time Warner's franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-way for use by the Township's residents; and

WHEREAS, the aforesaid rights-of-way used by Time Warner are public properties acquired and maintained by the Township and held in trust on behalf of citizens of the Township and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the Township desires to protect and manage the aforesaid rights-of-way, require high standards of customer service, ensure future technical improvements to maintain a technologically-advanced cable system, establish certain reporting requirements, obtain certain complimentary services, receive franchise fees for Time Warner's use of the Township's rights-of-way as provided by federal law, establish certain reporting requirements and provide for the current and future cable-related needs of its residents; and

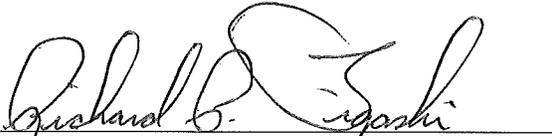
WHEREAS, the Township held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Township's future cable-related community needs; and

WHEREAS, the Township has determined that Time Warner has the financial, legal and technical ability to provide cable services to subscribers located in the Township; and

WHEREAS, the Township, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Time Warner's franchise according to the terms and conditions contained in the cable franchise agreement negotiated between the Township and Time Warner.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED that the Township Board of Supervisors does hereby approve the cable franchise agreement negotiated with Time Warner, including all of the terms and conditions contained therein, and does hereby authorize the execution of such agreement.

ENACTED this 1st day of December, 2015.


Richard P. Figaski, Secretary

CABLE FRANCHISE AGREEMENT

BETWEEN

THE TOWNSHIP OF MILLCREEK

AND

TIME WARNER CABLE MIDWEST LLC

D/B/A TIME WARNER CABLE

With assistance from:

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the ____ day of _____, 2015 (hereinafter referred to as the “Effective Date”) by and between the Township of Millcreek, a municipality located in Erie County, Pennsylvania (hereinafter referred to as the “Township”) and Time Warner Cable Midwest LLC d/b/a Time Warner Cable (hereinafter referred to as “Time Warner Cable”).

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the applicable provisions of the Telecommunications Act of 1996 and any amendments thereto (hereinafter collectively referred to as the “Cable Act”), the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Pennsylvania law, the Township is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Township’s jurisdiction; and

WHEREAS, Time Warner Cable currently holds a cable franchise from the Township by virtue of a cable franchise agreement originally granting a cable franchise to TCI of Pennsylvania, Inc.; and

WHEREAS, Time Warner Cable has requested that the Township renew Time Warner Cable’s franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the Township’s residents; and

WHEREAS, the aforesaid rights-of-way used by Time Warner Cable are public properties acquired and maintained by the Township held in trust on behalf of citizens of the Township and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the Township desires to protect and manage the aforesaid rights-of-way, require high standards of customer service, encourage future technical improvements to maintain a technologically-advanced Cable System, establish certain reporting requirements, obtain certain complimentary services, preserve and enhance the Township’s public, educational and governmental channels, receive franchise fees for Time Warner Cable’s use of the Township’s rights-of-ways as provided by federal law, and provide for the current and future cable-related needs of its residents; and

WHEREAS, the Township held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator’s past performance and

identifying the Township's future cable-related community needs; and

WHEREAS, the Township has determined that Time Warner Cable has the financial, legal and technical ability to provide Cable Services to Subscribers located in the Township; and

WHEREAS, the Township, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Time Warner Cable's franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Township and Time Warner Cable agree as follows:

SECTION 1 **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Time Warner Cable.

(b) Basic Service - That service tier which shall include at least the retransmission of local broadcast television signals and any educational and/or governmental access channels.

(c) Broadcast - Over-the-air transmission by a television or radio station.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Township, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that

such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Complaint - Any written (including electronic) or oral communication by a Subscriber, or by the Township on behalf of group(s) of subscribers, expressing dissatisfaction with any aspect of Time Warner Cable's business or the operation of its Cable System.

(g) Drop - The coaxial or fiber optic or other cable that connects a home or building to the rest of the Cable System.

(h) FCC - Federal Communications Commission.

(i) Franchise – the right granted by the Township to construct, operate and maintain a Cable System within the corporate limits of the Township as embodied in the terms and conditions of this Agreement.

(j) Gross Revenues - All revenue received directly or indirectly by Time Warner Cable or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Time Warner Cable's Cable System in the Township to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls;
- (11) inside cable wire maintenance fees;
- (12) service plan protection fees;

- (13) convenience fees;
- (14) early termination fees;
- (15) fees for Leased Access Channels;
- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all cable service equipment, including converters and remote control devices;
- (18) any and all locally-derived cable service advertising revenues;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services;
- (21) fees for any and all music services;
- (22) Pass-through of broadcast retransmission fees;
- (23) late payment fees to the extent revenue;
- (24) billing and collection fees to the extent revenue;
- (25) NSF check charges to the extent revenue; and
- (26) Pass-through of Franchise Fees.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by Time Warner Cable and imposed directly upon any Subscriber or user by the Township, state, federal or other governmental unit. In the event of any dispute over the classification of Gross Revenues, the Township and Time Warner Cable agree that reference should be made to industry standards and to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB").

(k) Normal Business Hours - 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.

(l) Normal Operating Conditions - Business conditions within Time Warner Cable's service department which are within the control of Time Warner Cable. Those conditions that are not within the control of Time Warner Cable include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(m) Outlet - An interior receptacle that connects a television set to the Cable System.

(n) Programming - Programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(o) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, including property over which the Township has a sufficient easement or right-of-way, which are under the jurisdiction of the Township.

(p) Service Interruption - The loss of picture or sound on one (1) or more channels.

(q) Subscriber - A person or entity who contracts with Time Warner Cable for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

SECTION 2 **GRANT OF FRANCHISE**

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the Township hereby grants a non-exclusive and revocable franchise to Time Warner Cable, authorizing and permitting Time Warner Cable to construct, operate, and maintain a Cable System in the Township's public rights-of-way.

Subject to the terms and conditions contained herein, the Township hereby grants to Time Warner Cable the right to construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in, under, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places and rights-of-way under the jurisdiction of the Township, including property over which the Township has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on _____, unless this Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

2.3 NON-EXCLUSIVITY

(a) Time Warner Cable acknowledges and agrees that the Township reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the Township.

(b) The Franchise granted to Time Warner Cable is non-exclusive; however, if the Township grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Time Warner Cable, then Time Warner Cable may request an amendment to this Agreement to provide Time Warner Cable with competitive equity. If, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the parties agree to amend this Agreement to provide Time Warner Cable with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the Township proposing to serve Subscribers within the Township, then the Township shall notify Time Warner Cable in writing of the submission of the application.

2.4 CHANGE OF LAW

Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any entity desiring to construct, operate or maintain a cable system in the Township to obtain a franchise from the Township for the construction, operation or maintenance of a Cable System and another entity actually provides Cable Service in the Township under the terms of the changed law, then Time Warner Cable shall have the right to terminate this Franchise and operate the Cable System under the terms and conditions established in applicable law.

2.5 POLICE POWERS

Time Warner Cable's rights under this Agreement are subject to the police powers of the Township to adopt and enforce generally applicable laws and regulations necessary for the safety and welfare of the public provided such regulations are reasonable, not materially in conflict with the privileges granted in the franchise and consistent with all federal and state laws, rules, regulations and orders. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

2.6 NO WAIVER OF RIGHTS

No course of dealing between the Township and Time Warner Cable, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived.

2.7 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAW

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This franchise is further subject to all applicable ordinances and resolutions of the Township. Without waiving any of its powers, the Township agrees that, to the extent any terms of this Agreement are inconsistent with the terms of any such cable ordinances, this Agreement shall control.

SECTION 3

COMPENSATION TO THE TOWNSHIP

3.1 FRANCHISE FEES

Time Warner Cable shall pay to the Township an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the Township. Time Warner Cable shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability. The Township may amend the franchise fee upon one hundred-twenty (120) days written notice to Time Warner Cable provided that the franchise fee may not exceed the maximum percentage permitted by law provided that the law establishes a maximum percentage. Any change in Time Warner Cable's franchise fee obligation contained herein shall commence within one hundred-twenty (120) days from such written notice.

3.2 QUARTERLY PAYMENTS

Franchise fee payments to the Township under this provision shall be computed at the end of each calendar quarter. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter) of the previous year. Upon request and if mutually agreeable, Time Warner Cable shall deposit the franchise fee payments electronically into an account as designated by the Township. In the event that any

franchise fee payment is not made on or before the date by which it is due, then interest shall be added at the annual rate of prime plus 2% of the amount of franchise fee revenue due to the Township. The interest rate shall be applied as described from the date such franchise fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Township may have for additional sums payable under this Agreement.

3.3 QUARTERLY REPORTS

Each franchise fee payment shall be accompanied by a written report containing an accurate statement of Time Warner Cable's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Time Warner Cable's Cable System and a description of the basis for computation of fees. The report shall be signed by a financial representative of Time Warner Cable. Furthermore, upon written request, Time Warner Cable shall provide the then current Time Warner Cable basic subscriber counts to the Township.

3.4 AUDITS

No more than once every three (3) years during the term of the Agreement, upon thirty (30) days prior written notice, the Township shall have the right to conduct an independent audit or franchise fee review of Time Warner Cable's records reasonably related to the sources, amounts and computation of Gross Revenues in accordance with generally accepted accounting principles. Such audit or review period shall be for up to the maximum number of years permitted in accordance with Pennsylvania law. Upon request, Time Warner Cable shall provide to the Township the financial records related to the franchise fee audit or review. Such records shall also be kept or made available to the Township at the notice location for Time Warner Cable specified in Section 14.3 below. If franchise fees have been underpaid, then Time Warner Cable shall pay such franchise fees with interest at the then current prime rate plus two percent (2%). If franchise fees have been underpaid by five percent (5%) or more, then Time Warner Cable also shall pay the total cost of the audit or franchise fee review and no franchise fee audit or review frequency limitation shall apply.

3.5 BUNDLED SERVICES

If Cable Services subject to the franchise fee required under this Section are provided to Subscribers in conjunction with non-Cable Services for a single aggregate price, the franchise fee shall be applied to the portion of the aggregate price attributed to Cable Services as booked by Time Warner Cable. It shall be the

obligation of Time Warner Cable to maintain its books and attribute its revenues to Cable Services consistent with GAAP and Time Warner Cable shall not make such attribution in order to avoid franchise fees.

SECTION 4

SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

4.1 TECHNICAL REQUIREMENT

Time Warner Cable shall operate, maintain, construct and extend the Cable System so as to offer reliable delivery of one-way and two-way Cable Services for all programming services throughout the Township. The video signals provided by the Cable System shall be delivered in accordance with FCC standards. The Cable System shall meet or exceed any and all generally applicable technical performance standards of the FCC. Time Warner Cable shall comply with the National Electrical Safety Code, the National Electric Code and any related applicable federal laws and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the Township.

4.2 AREA TO BE SERVED

(a) Cable Service shall be made available to every residence or business requesting Cable Service provided that Time Warner Cable is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Time Warner Cable shall extend the Cable System into all areas within the Township where there is a minimum of twenty (20) residences per cable mile of aerial cable or sixty (60) residences per cable mile of underground cable.

Density per cable mile shall be computed by dividing the number of residences in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the residences and businesses in such area in accordance with Time Warner Cable's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the Public Rights-of-Way. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises. Time Warner Cable shall complete said extensions within three (3) months of written notification to Time Warner Cable by the Township that an area has met the minimum density standard set forth herein (weather permitting). Time Warner Cable's obligation hereunder shall be subject to the timely

performance of walk-out, make ready and location of all underground utilities and ability to obtain easements on reasonable terms and conditions.

(b) Any business or residence within one hundred twenty-five feet (125 ft.) aerial distance of the cable plant shall be entitled to a standard residence installation rate or standard business installation rate, as appropriate. For any business or residence in excess of one hundred twenty-five feet (125 ft.) aerial distance or that requires an underground installation, Time Warner Cable shall extend Cable Service at a rate not to exceed Time Warner Cable's actual cost of installation from its main distribution system.

(c) The Township has the right to require that Time Warner Cable places wires and/or equipment underground in any new developments, provided that the Township imposes such requirement on all similarly situated entities.

4.3 SERVICE TO MULTIPLE DWELLING UNITS

Time Warner Cable and the Township hereto acknowledge and agree that installation and provision of Cable Service to multiple dwelling units (MDU's) are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Time Warner Cable, which negotiations shall, when applicable, be conducted in accordance with the procedures set forth in the Communications Act of 1934, as amended, applicable FCC regulations, the Landlord Tenant Act of 1951, as amended and the applicable provisions of the Tenant's Right to Cable Act, 68 P.S. §§ 250.501-B *et seq.*

4.4 PERMITS

Time Warner Cable shall apply to the Township for all generally required permits and shall not undertake any activities in the public rights-of-way subject to a permit without receipt of such permit which permits shall not be unreasonably delayed or denied. Time Warner Cable shall be required to pay any fees required for such permits.

4.5 REPAIRS AND RESTORATION

(a) Whenever Time Warner Cable or any agent, including any subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private way or place, the same shall be replaced and the surface restored in as good condition as before the disturbance within twenty (20) business days of the completion of the disturbance, weather permitting. Upon failure of Time Warner Cable to comply within the time specified and the Township having notified Time Warner Cable in writing of the restoration and repairs required, the Township

may cause proper restoration and repairs to be made and the expense of such work shall be paid by Time Warner Cable upon demand by the Township.

(b) Whenever Time Warner Cable or any agent, including any subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the Township, except as may be approved by the Township if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Time Warner Cable shall promptly repair and restore any private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(c) Time Warner Cable's operating, construction, repair and maintenance personnel, including all agents and subcontractors, shall be thoroughly trained in the use of all equipment and the safe operation of vehicles. Time Warner Cable's operating, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be routinely inspected and maintained so that conditions that could develop into safety hazards for the public and/or operating and maintenance personnel may be corrected before they become a hazard. Time Warner Cable shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Township.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Time Warner Cable personnel, including all agents and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Time Warner Cable or any agent, including any subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Time Warner Cable also shall adhere to any additional requirements which the Commonwealth may establish in the future. Time Warner Cable shall also adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the Township, wherever situated or located, shall at all times be kept and maintained in

a safe, non-hazardous and suitable condition and in good order and repair in accordance with customary industry standards and practices.

4.6 SYSTEM MONITORING

Time Warner Cable shall conduct testing or periodic signal monitoring in accordance with the requirements of the FCC. Such capability shall enable Time Warner Cable to monitor the signal quality of all channels delivered on the Cable System, including any Public, Educational and/or Governmental Channels to the extent required by the FCC.

4.7 SERVICE AREA MAPS

Upon request, Time Warner Cable shall provide to the Township for its exclusive use and shall maintain at its local offices a complete set of Time Warner Cable service area strand maps of the Township, on which will be shown those areas in which its facilities exist and the location of all streets. The maps shall be provided to the Township in hardcopy and also, if requested and available in an electronic GIS format which is compatible with the Township's GIS format, provided Time Warner Cable maintains the strand maps in such format. The maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Time Warner Cable shall provide the Township with updated maps within thirty (30) days after any request by the Township.

4.8 BUILDING MOVES

In accordance with applicable laws, Time Warner Cable shall, upon the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of the building. Time Warner Cable shall be given at least thirty (30) days advance notice to arrange for such temporary wire changes, and Time Warner Cable shall be reimbursed by the entity requesting relocation.

4.9 DISCONNECTION AND RELOCATION

(a) Time Warner Cable shall, at no cost to the Township, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the Township or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, site distance visibility, or the construction of any public improvement or structure.

(b) In requiring Time Warner Cable to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat Time Warner Cable the same as, and require no more of Time Warner Cable than, any similarly situated entity, including but not limited to, telephone, power and water.

4.10 EMERGENCY REMOVAL OF EQUIPMENT

If, at any time, in case of fire or other disaster in the Township, it shall be necessary, in the reasonable judgment of the Township or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Township shall have the right to do so without cost or liability, provided that, wherever possible, the Township shall give Time Warner Cable notice and the ability to relocate wires, cable or other equipment.

4.11 TREE TRIMMING

Time Warner Cable, or its agents, including subcontractors, shall have the authority to trim trees upon and overhanging public streets, alleys, sidewalks and the public rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables or other equipment of Time Warner Cable in accordance with applicable laws and regulations. Any such tree trimming shall be performed in accordance with arboreal standards and the regulations of the Township. If Time Warner Cable or its agents, including subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and maintenance of its equipment, it shall apply to the Township for permission and, if permission is granted, shall perform such cutting and removal in accordance with accepted arboreal standards and with the regulations of the Township.

SECTION 5 **CABLE SYSTEM AND STATE-OF-THE-ART**

5.1 CABLE SYSTEM

Time Warner Cable shall maintain a Cable System with a bandwidth no less than 750 MHz which shall meet or exceed the technical performance standards of the FCC.

5.2 STATE-OF-THE-ART

Time Warner Cable and the Township acknowledge that the technology of Cable Systems is an evolving field. Time Warner Cable's Cable System in the Township shall be capable of offering Cable Services that are comparable to the

Cable Services offered on other Cable Systems in Northeastern Ohio and Northwestern Pennsylvania owned and managed by Time Warner Cable or its Affiliated Entities (“Comparable Systems”) pursuant to the terms of this section. The Township may send a written notice to Time Warner Cable, not to exceed one request every two (2) years, requesting information on Cable Services offered by such Comparable Systems. Specifically, Time Warner Cable shall provide the Township with information on any Cable Services that are offered in the Comparable Systems, but not being offered in the Township, the percentage of total Subscribers in the Comparable Systems to whom such Cable Services are available and when Time Warner Cable anticipates making such Cable Services available in the Township.

SECTION 6

CUSTOMER SERVICE STANDARDS

6.1 Time Warner Cable shall comply with the following customer service standards.

(a) Time Warner Cable shall maintain a business office that is conveniently located and shall be open during Normal Business Hours. Time Warner Cable shall provide and maintain a local or toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative by the next business day.

(b) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

(c) Under Normal Operating Conditions, the customer shall receive a busy signal less than three (3) percent of the time.

(d) The standards in (b) and (c) above shall be met no less than ninety percent of the time under normal operating conditions measured on a quarterly basis.

(e) Time Warner Cable shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements

above unless a historical record of Complaints indicates a clear failure to comply. If the Township determines, after receiving Complaints itself and/or receiving a record of Complaints made to Time Warner Cable in accordance with Section 9 below, that there is a clear failure to comply with the telephone answering requirements above, the Township shall notify Time Warner Cable in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the Township with its results.

6.2 INSTALLATIONS AND SERVICE CALLS

(a) Time Warner Cable shall maintain a competent staff of well-trained employees sufficient to provide adequate and prompt service to its Subscribers. Time Warner Cable shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Time Warner Cable employee or agent, including any subcontractor, shall prominently display the Time Warner Cable logo.

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

(c) Excluding conditions beyond its control, Time Warner Cable shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Time Warner Cable shall begin actions to correct other service problems the next business day after notification of the service problem.

(d) Upon scheduling of appointments with the customer for installations, service calls and other activities, Time Warner Cable shall provide the customer with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Time Warner Cable may make available service calls and installation activities outside of Normal Business Hours at a time that is mutually convenient for the customer and for Time Warner.

(e) Time Warner Cable may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the customer.

6.3 NOTICES

(a) Time Warner Cable shall provide written notice to Subscribers as required by FCC regulations. These regulations as in effect on the date of execution of this Franchise Agreement include the following:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service, any converters and any remote control devices;
- (6) Billing and customer Complaint procedures;
- (7) Time Warner Cable's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) Time Warner Cable shall notify Subscribers and the Township in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes, provided that such change is within the control of Time Warner Cable.

(c) Written information of each of the following areas at the time of installation of service, at least annually to all subscribers and at any time upon request.

6.4 BILLING

Time Warner Cable shall comply with FCC regulations regarding billing. These regulations as in effect on the date of execution of this Franchise Agreement include the following:

Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including but not limited to basic and premium service charges and

equipment charges. Bills will also clearly delineate all activity during the billing period including optimal charges, rebate and credits.

6.5 CUSTOMER COMPLAINT PROCEDURES

Time Warner Cable shall establish procedures for resolving all customer Complaints, which shall include at least the following:

(a) Time Warner Cable shall provide the customer with a response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the Township is contacted directly about a customer complaint, it shall notify Time Warner Cable promptly and in writing. When Time Warner Cable receives such notification, the time period for Time Warner Cable to respond as required by Section 6.5(a) above shall commence. If the Township notifies Time Warner Cable in writing, then Time Warner Cable shall respond in writing within the time period specified in Section 6.5(a) above.

(c) Time Warner Cable customer Complaint records shall be available for inspection by the affected Subscribers.

6.6 DISCONNECTION

Time Warner Cable may disconnect or terminate a Subscriber's service for good cause.

6.7 SERVICE CANCELLATIONS

If a Subscriber requests the cancellation of his or her Cable Service from Time Warner Cable, Time Warner Cable must cancel such Cable Service and cease billing the Subscriber for such Cable Service within seven (7) days of the request unless the Subscriber specifically requests a later date and provided the Subscriber returns any converter box in his or her possession to Time Warner Cable's business office.

6.8 CREDIT FOR SERVICE INTERRUPTIONS

In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours, upon receipt of written or oral request, Time Warner Cable shall grant such Subscriber a pro rata credit or rebate upon request, of that portion

of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

6.9 PRIVACY

Time Warner Cable shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

SECTION 7 **SERVICES TO THE COMMUNITY**

7.1 SERVICES TO COMMUNITY FACILITIES

Time Warner Cable shall continue to provide, at no charge to the Township, complimentary basic and standard cable services to all municipal facilities to which Time Warner is providing such complimentary services as of the Effective Date. In addition, upon request, Time Warner Cable shall, at no charge to the Township, provide complimentary basic and standard cable services to all present and future municipally-owned buildings used for municipal purposes, police stations, fire companies, all public K-12 school buildings and public libraries, which can be served by a standard installation (“Permitted Free Locations”). No charge shall be made for installation or service, except that Time Warner Cable may charge for installation or service for more than one (1) drop in Permitted Free Location.

(a) Within three (3) months of the Effective Date, Time Warner Cable shall provide or maintain one (1) cable Drop, outlet, converter box (and any other required end user equipment) and Standard cable level Services (or equivalent) package to each Permitted Free Location. No charge shall be made for installation, equipment or service.

(b) For the purposes of this section, the term “school” means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include “home schools” or “cyber schools,” or any other educational situation that does not meet specific criterion set forth herein. During the term of this Agreement, new public facilities shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as Permitted Free Locations.

7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL

(a) Time Warner Cable shall make available on its system in the Township, two (2) educational and/or governmental (“EG”) access channels in accordance with Section 611 of the Cable Act. Such EG channels shall be used for non-commercial community produced programming related to educational and/or governmental activities. The purpose of these channels is to contribute to an informed citizenry by, among other things, showing local government at work, responding to local needs, telecasting community programs, and bringing local education into the home. The Township shall have complete control over the content, scheduling, administration and all other programming aspects of the EG channel and may delegate such functions to an appropriate designee. Time Warner Cable shall not exercise any editorial control over EG channel programming. Whether operating on an analog or digital format, Time Warner Cable shall cablecast any activated EG channel so that it may be received by all Subscribers in the Township with appropriate equipment.

(b) Time Warner Cable shall provide and maintain in good working order the facilities to enable the transmission of programming for carriage on the EG channels from the following site: Township Hall at 3608 W. 26th Street.

(c) To enable the Township to utilize the EG channels, the Township may select two (2) locations within the municipal boundaries of the Township and Time Warner Cable shall provide and install, within one hundred eighty (180) days of a written notice from the Township, the cables, wires, lines, and other signal distribution equipment such that live programming can originate from the selected location and be distributed via the Cable System to Subscribers in the Township. These cables, wires, lines and other signal distribution equipment shall be collectively known as the “Return Lines.” This obligation of Time Warner shall be deemed satisfied to the extent that the Return Lines are currently installed as of the Effective Date.

The costs of the construction and maintenance of the Return Lines shall be at the expense of the Township. Time Warner Cable shall be responsible for maintaining the Return Lines to the video origination point, provided that the Township provides Time Warner Cable with access to this location and access to the EG equipment within the location.

(d) Time Warner Cable shall deliver the EG channel signals at a level of technical quality that is comparable to the level of technical quality provided by Time Warner Cable for signals of commercial channels; provided, however, that Time Warner Cable shall have no responsibility to improve upon or modify the signal quality of any EG channel content provided to Time Warner Cable by any EG

channel programmer.

(e) The Township or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channels. The Township and Time Warner Cable agree to work cooperatively in implementing the EG channels through such means and in such manner as shall be mutually satisfactory.

(f) The Township and Time Warner Cable agree that any and all costs incurred by Time Warner Cable for supporting such EG channels, including any and all equipment, maintenance and repair, may be designated as “costs of franchise requirements” or “external costs” as defined by the FCC.

7.3 EG CAPITAL SUPPORT FUNDING

Time Warner Cable shall provide a one-time monetary grant to the Township to be used for the purchase of equipment for the production of local EG. The EG Grant provided by Time Warner shall be in the amount of \$153,000. Such grant shall be paid within six (6) months of the Effective Date and shall not be offset against any franchise fees paid to the Township. Time Warner Cable and the Township agree that the cost of such grant may be designated as a “cost of franchise requirements” or “external cost” as defined by the FCC.

SECTION 8 REGULATION BY THE TOWNSHIP

8.1 RIGHT TO INSPECT

(a) The Township shall have the option, upon twenty (20) business days written notice and during Normal Business Hours, to inspect at the notice location for Time Warner Cable specified in Section 14.3 below all documents, records and other pertinent information maintained by Time Warner Cable which relate to Time Warner Cable’s compliance with the terms of this Agreement.

(b) In addition, Time Warner Cable shall maintain for inspection by the public and the Township all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

8.2 RIGHT TO CONDUCT COMPLIANCE REVIEW

The Township or its representatives may conduct a compliance review, including a possible public hearing, with respect to whether Time Warner Cable has complied with the terms and conditions of this Agreement so long as it provides Time Warner Cable with thirty (30) days written notice in advance of the commencement of any such reviews or public hearings. Such notice shall reference the sections of the Agreement that are under review, so that Time Warner Cable may organize the necessary books and records for appropriate review by the Township.

8.3 CONFIDENTIALITY

To the extent permitted under Pennsylvania law, the Township shall maintain as confidential any information provided to it by Time Warner Cable under the terms of this Franchise which Time Warner Cable has designated as confidential. In the event that the Township believes at any time that it is required by law to disclose such information to a third party, the Township will so notify Time Warner Cable at a time prior to any such disclosure that affords Time Warner Cable a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

8.4 RESERVED AUTHORITY

Each party reserves any and all rights arising from the Cable Act, any amendments thereto, and any other federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the Township's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-way subject to Section 2.7.

SECTION 9 **REPORTING REQUIREMENTS**

9.1 QUARTERLY FRANCHISE FEE REPORT

In accordance with Section 3.3 of this Agreement, Time Warner Cable shall accompany each quarterly franchise fee payment to the Township with a quarterly report.

9.2 CUSTOMER COMPLAINT REPORT

Upon written request, Time Warner Cable shall submit to the Township, no later than thirty (30) days after such written request, a summary of the Complaints that required a work order and/or service call, originating from the Township received during the previous twelve-month period. The summary shall include the number of complaints, the dates they were received, and a summary description of the resolutions of the complaints.

9.3 GOVERNMENT REPORTS

Upon written request, Time Warner Cable shall provide to the Township, no later than thirty (30) days after such written request, copies of any and all non-confidential communications, reports, documents, pleadings and notifications of any kind which Time Warner Cable has submitted to any federal, state or local regulatory agencies if such documents relate to Time Warner Cable's Cable System within the Township.

SECTION 10

FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION

10.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the Township has reason to believe that Time Warner Cable violated any material provision of this Agreement, it shall notify Time Warner Cable in writing of the nature of such violation and the section of this Agreement that it believes has been violated. If the Township does not notify Time Warner Cable of any violation of this Agreement, it shall not operate as a waiver of any rights of the Township hereunder or pursuant to applicable law.

(b) Time Warner Cable shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Time Warner Cable must cure the violation shall be extended for such additional time necessary to complete the cure, provided that Time Warner Cable shall have promptly commenced to cure and is diligently pursuing its efforts to cure.

(c) Time Warner Cable shall be liable to the Township for all actual damages due to the Township resulting from any such violations.

(d) In certain circumstances where actual damages are difficult to ascertain, the Township may impose liquidated damages as follows:

(1) Failure to provide PEG equipment, facilities or services as required....\$100 per day from time due.

(2) Failure to provide the emergency override system to perform, or of the Grantee to remove any hazardous conditions caused by its cable system in the event of a public emergency or other situation requiring dissemination of vital information to the public....\$250 per occurrence.

(3) Failure to have in place required insurance....\$100 per day from time due until restored.

(4) Failure to provide information and related documentation in connection with any franchise fee audit/review in accordance with Section 3.4...\$100 per day.

(5) Failure to provide complimentary services to municipal facilities in accordance with Section 7.1...\$100 per day.

Such damages shall not be a substitute for specific performance by Time Warner Cable or legal or equitable action by the Township, but shall be in addition to such specific performance or action.

(e) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Township. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation, after which the Township may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction.

(f) Nothing in this Section shall preclude the Township from exercising any other right or remedy with respect to a violation that continues past the time the Township ceases to assess liquidated damages for such breach.

10.2 PERFORMANCE BOND

(a) Time Warner Cable shall obtain and maintain in the event of a system-wide rebuild during the Franchise term, at its sole cost and expense, a performance bond running to the Township with a surety company licensed to do business in the Commonwealth of Pennsylvania. The performance bond shall provide that the

Township may recover from the principal and surety any and all compensatory and/or liquidated damages and incurred by the Township as a result of Time Warner Cable's work on the course of the rebuild.

(b) The performance bond shall be in the amount of Twenty Five Thousand Dollars (\$25,000). Time Warner Cable shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Township.

10.3 REVOCATION

(a) In addition to the other rights, powers and remedies retained by the Township under this Agreement, the Township reserves the separate and distinct right to revoke this franchise if:

(1) Time Warner Cable practiced any fraud or deceit upon the Township in its operation of its Cable System or any other activities pursuant to this Agreement;

(2) Time Warner Cable repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 4.1 of this Agreement;

(3) Time Warner Cable repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Time Warner Cable or occurs as a result of circumstances beyond its control or by reason Force Majeure as defined in Section 14.1. Time Warner Cable shall not be excused from the performance of any of its obligations under this franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the governing body after an appropriate public hearing that shall afford Time Warner Cable due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Time Warner Cable at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the

grounds for revocation. The Township, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Time Warner Cable of mitigating circumstances or good cause for the existence of such grounds. The Township shall issue such declaration and finding within thirty (30) days in a written decision which the Township shall send via certified or overnight mail to Time Warner Cable. Nothing herein shall limit in any way Time Warner Cable's rights to seek review of such declaration in an appropriate forum.

SECTION 11 **PROGRAMMING**

11.1 CHANNEL CAPACITY

Time Warner Cable shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

11.2 BROADCAST CHANNELS

To the extent required by Federal law, Time Warner Cable shall provide all Subscribers a basic tier of service including, but not limited to: 1) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; 2) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and 3) the Public, Educational and Governmental channel. All such signals shall comply with FCC standards.

11.3 SIGNAL SCRAMBLING

Time Warner Cable shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

11.4 CONTINUITY OF SERVICE

It shall be the right of all subscribers to receive service from Time Warner Cable provided their financial and other obligations to Time Warner Cable are honored. Subject to the Force Majeure provisions in Section 14.1 of this Agreement, Time Warner Cable shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service. For the purpose of construction, routine repairing or testing of the Cable System, Time Warner Cable shall use its best efforts to interrupt service only during periods of minimum use. When necessary service

interruptions of more than twenty-four (24) hours can be anticipated, Time Warner Cable shall notify Subscribers in advance of such service interruption.

11.5 PARENTAL CONTROL CAPABILITY

Upon request, Time Warner Cable shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System providing sexually explicit adult programming. Such capability may be included as a function of a converter.

SECTION 12 LIABILITY AND INDEMNIFICATION

12.1 INDEMNIFICATION

Time Warner Cable shall indemnify, defend, save and hold harmless the Township, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense to the extent arising, caused by or connected with any act or omission of Time Warner Cable, its officers, agents, contractors, subcontractors or employees, arising out of the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities. The obligation to indemnify, defend, save and hold the Township harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, attorneys' fees, expert fees, court costs and all other costs of such indemnification.

12.2 INSURANCE

(a) Time Warner Cable shall maintain insurance throughout the term of this Agreement with the Township as an additional insured, with an insurance company which is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than "A-", indemnifying the Township from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Time Warner Cable or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) All insurance coverage shall be maintained throughout the period of this Agreement. All insurance policies shall contain a provision that the Township will receive thirty (30) days written notice prior to any changes or cancellation of the policy. All expenses incurred for said insurance shall be at no cost to the Township.

(c) A certificate evidencing the insurance coverage required herein shall be provided by Time Warner Cable to the Township within thirty (30) days of the Effective Date and within thirty (30) days of obtaining new insurance coverage or renewal of such insurance coverage throughout the term of this Agreement.

SECTION 13 **FRANCHISE TRANSFER AND RENEWAL**

13.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Time Warner Cable shall not transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the Township which consent shall not be unreasonably withheld.

(b) Neither Time Warner Cable nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the Township which consent shall not be unreasonably withheld. The Township herein consents to a transfer of control to Charter Communications, Inc. pursuant to an agreement of May 23, 2015 among Time Warner Cable Inc., Charter Communications, Inc. and other parties.

(c) Neither Time Warner Cable nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than fifty (50%) of its equitable ownership in the Cable System without the prior written consent of the Township which consent shall not be unnecessarily withheld.

(d) Time Warner Cable shall make written application to the Township of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment.

(e) Any consent by the Township for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in this Agreement.

(f) Notwithstanding anything to the contrary, no Township approval shall be required for a transfer or assignment of the Franchise to an entity controlled by, controlling or under the same common control as Time Warner Cable.

13.2 RENEWAL

The Township and Time Warner Cable agree that any proceedings or activities that relate to the renewal of Time Warner Cable's franchise shall be governed by applicable federal and state law.

SECTION 14 MISCELLANEOUS

14.1 FORCE MAJEURE

If for any reason of force majeure, Time Warner Cable is unable in whole or in part to carry out its obligations hereunder, Time Warner Cable shall not be deemed in violation of this Agreement during the continuance of such inability. The term "force majeure" as used herein shall mean any cause beyond the control of Time Warner Cable including, but not limited to: acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment, and partial or entire failure of utilities.

14.2 REMOVAL OF SYSTEM

(a) Upon lawful denial of renewal or revocation of this Agreement, Time Warner Cable shall remove its supporting structures, poles, transmissions and

distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within three (3) months of such lawful denial of renewal or revocation, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Time Warner Cable's cost.

(b) During the term of the Agreement, if Time Warner Cable decides to abandon or no longer use all or part of its Cable System, it shall give the Township written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. If Time Warner Cable does not remove the property, the Township shall have the right to remove the property itself and charge Time Warner Cable with the costs related thereto, or transfer ownership of the property to the Township's designee provided fair market value is paid to Time Warner Cable.

(c) The obligations to remove under subsections (a) and (b) above do not apply to buried cable, the abandonment of which causes no material damage.

14.3 NOTICES

Every notice or payment to be served upon or made to the Township shall be sent to:

Township of Millcreek
3608 West 26th Street
Erie, PA 16506
Attention: Supervisor

The Township may specify any change of address in writing to Time Warner Cable.

Every notice to be served upon Time Warner Cable shall be sent to:

Time Warner Cable
530 South Main Street - Suite 1751
Akron, OH 44311
Attention: Government Affairs Department

With a copy to:

Time Warner Cable

60 Columbus Circle
New York, NY 10023
Attention: Law/Regulatory Department

Time Warner Cable may specify any changes of address in writing to the Township. Each delivery to Time Warner Cable or the Township shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

Such addresses may be changed by either party upon notice to the other party given as provided in this Section. In addition, either party may agree to receive certain notices, reports or demands by email at an email address which it provides to other party.

14.4 EQUAL EMPLOYMENT OPPORTUNITY

Time Warner Cable is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

14.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.6 GOVERNING LAW

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania and the United States of America. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Erie, or in the United States District Court for the Western District of Pennsylvania.

14.7 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Township and Time Warner Cable. This Franchise Agreement supersedes all prior agreements or ordinances.

14.8 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be unlawful, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

14.9 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Township or Time Warner Cable may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Township and Time Warner Cable may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the Township and Time Warner Cable.

14.10 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Time Warner Cable, the Township and their respective successors and assigns. This Agreement is authorized by Ordinance No. 2015-15 dated DEC. 1, 2015 of the Township.

WITNESS our hands and official seals to this Cable Franchise Agreement.

ATTEST

Sheryl A. Williams

TOWNSHIP OF MILLCREEK

By: *Richard P. Figaski*

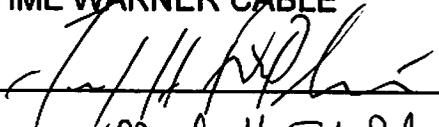
Name (Print): RICHARD P. FIGASKI

Title: TOWNSHIP SECRETARY

Date: 12/1/2015

ATTEST:

TIME WARNER CABLE MIDWEST LLC
D/B/A TIME WARNER CABLE

By: 

Name (Print): Mark H. Fitzpatrick

Title: SVP & CFO, Residential Services

Date: 2/29/16