

BY: Rick J. Shapiro

An Ordinance awarding to Time Warner Entertainment L.P., a franchise to construct, own, operate and maintain a cable system within the City of Bexley, Ohio, a copy of which is attached to and made a part of this Ordinance and is referenced as Exhibit A. and to declare an emergency.

WHEREAS, Time Warner Entertainment L.P., has made application to renew the current franchise to construct, own and operate a cable system to serve the residents of the City of Bexley; and,

WHEREAS, the availability of a second cable system in the City of Bexley will bring the benefits of competition to the citizens of Bexley; and,

WHEREAS, review has been made, and it has been recommended to this Council by the Bexley Technology Commission, Telecommunication Subcommittee, that the franchise agreement in the form attached to and made of part of this Ordinance should be awarded to Time Warner Entertainment L.P., NOW THEREFORE;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO

Section 1. That the Mayor and Auditor are hereby authorized to execute a franchise agreement in the form attached to and made a part of this Ordinance as Exhibit A, with Time Warner Entertainment L.P.

Section 2. That if the franchise agreement has not been executed by the parties and delivered to the City of Bexley by thirty (30) days after the effective date of this Ordinance, said Agreement is null and void and of no further legal force and effect.

Section 3. That this Ordinance is an emergency Ordinance necessary for the immediate preservation of the public peace, health and safety, said emergency being the need to provide the benefits of the renewed franchise agreement as soon as possible, including providing increased revenues to the City and providing the benefits of competing cable companies.

Passed: 11-23, 1999

Jeffrey McEllell
President of Council

Attest: Richard A. Lewis
Clerk of Council

Approved: 11/23, 1999

David H. Madison
David H. Madison
Mayor

10/26/99 First reading
11/09/99 Second reading
11/23/99 Third reading passed.

City of Bexley
Franchise Agreement
Time Warner Communications

Exhibit A

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CITY OF BEXLEY CABLE TV FRANCHISE AGREEMENT WITH TIME WARNER COMMUNICATIONS

Section 1 Statement of Intent and Purpose:

- 1.1 **Statement of Intent and Purpose.** The City of Bexley and Grantee intend, by entering into this Agreement, to establish the terms, conditions, and responsibilities for the operation of the cable system within the City of Bexley.
- 1.2 **General Application of FCC Rules and Regulations.** Unless specifically stated to the contrary in this Agreement, Grantee is obligated to fully comply with all Federal, State, and Local laws, Rules and Regulations, including, without limitation, the Cable Act and the Federal Communications Commission regulations ("FCC Regulations") contained in Title 47 of the Code of Federal Regulations ("CFR").

Section 2 Definitions:

For the purpose of this Agreement, the following words, terms, phrases and their derivations shall have the meanings 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 word "shall" and "will" are always mandatory and not merely directory. The word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 2.1 **"Affiliate"** means each Person who falls into one or more of the following categories:
- (i) each Person having, directly or indirectly, a Controlling Interest in the Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of five percent (5%) or more, joint venturer or joint venture partner, of the Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the Grantee; provided that "Affiliate" shall in no event mean any limited partner holding an interest of less than five percent (5%) of the Grantee, or any creditor of the Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a Controlling Interest in, being owned by,

or being under common ownership, common management, or common Control with, the Grantee.

- 2.2 **“Agreement” or “Franchise Agreement”** means this Agreement and any amendments or renewals thereof.
- 2.3 **“Basic Service”** shall have the meaning assigned to it under 47 CFR 76.901(a), as may be amended by subsequent statute or regulation.
- 2.4 **“Cable Act”** means the *Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 USC 521-611)* as amended by the *Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460(1992)* and the *Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat. 56(1996)*, and as each act might be further amended.
- 2.5 **“Cable Programming Service”** shall have the meaning assigned to it under 47 CFR 76.901(b), and as may be amended by subsequent statute or regulation.
- 2.6 **“Cable System”** means 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 a community, 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 only subscribers without using any public right-of-way; (C) a facility of common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act (47 U.S.C. 201 *et seq.*), except that such facility shall be considered a Cable Television System (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the Transmission of video programming directly to subscribers; unless the extent of such use is solely to provide interactive on demand services; (D) An open video system that complies with 47 U.S.C. 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.
- 2.7 **“Cable Service”** shall have the meaning assigned to it under 47 U.S.C.(Section 502), and as may be amended by subsequent statute or regulation.
- 2.8 **“Channel” or “Cable Channel”** means a portion of the electromagnetic or Electro-optical frequency spectrum which is used in a Cable System and which is capable of

delivering a television channel as defined by the Federal Communications Commission.

- 2.9 "**City**" means the City of Bexley, Ohio.
- 2.10 "**City Council**" means the elected legislative body of the City of Bexley.
- 2.11 "**City Requirements**" means all laws, rules, regulations, policies and directives of general application of the City of Bexley, in effect at present or to be adopted in the future by the Bexley City Council.
- 2.12 "**Complaint**" means any inquiry, allegation or assertion made by a Person regarding the unsatisfactory performance of the Cable System and/or customer service practices of Grantee.
- 2.13 "**Completion of Construction**" means that point in time when all distribution facilities have been built and installed by the Grantee so as to permit the offering of Cable Service to all of the potential subscribers in the Cable Service area.
- 2.14 "**Control or Controlling Interest**" means actual working control in whatever manner exercised. "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one (1) Person or groups of Persons.
- 2.15 "**Days**" means calendar days unless otherwise specified.
- 2.16 "**Direct Costs**" means all expenses associated with a specific activity or function, excluding overhead.
- 2.17 "**Drop**" means the cable that connects the Subscriber's home, office, or building (as the case may be) to the nearest feeder cable of the Cable System.
- 2.18 "**Dwelling Unit**" means any distinct household.
- 2.19 "**Effective Date**" shall mean the date this franchise is passed by City Council.
- 2.20 "**Federal Communications Commission**" and "**FCC**" mean the federal agency as presently constituted by the *Communications Act of 1934 (47 USC. Sec. 151 et seq.)*, its designee, or any successor thereto.
- 2.21 "**Franchise**" means the non-exclusive rights granted hereunder to construct, own and operate a Cable System along the Right-of-Way in the City, or within specified areas in the City, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the City as may be required by laws and regulations of the City of Bexley.

- 2.22 **Franchise Area** means all of the geographic area within which the City of Bexley owns or controls the Public Rights-of-Way, at present or in the future.
- 2.23 **Franchise Fees** means any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a Grantee or cable subscriber, or both, solely because of their status as such. The term "Franchise Fee" does not include:
- 2.23.1 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 which is unduly discriminatory against Grantee or cable subscribers);
 - 2.23.2 Capital costs which are required by the Franchise to be incurred for public services;
 - 2.23.3 Requirements or charges incidental to the awarding or enforcing of the Franchise, including, but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
 - 2.23.4 Any fee imposed under *Title 17, United States Code*.
- 2.24 **Grantee** means TW Entertainment L.P. dba Time Warner Communications, its lawful successor, transferee, or assignee or any person or entity who or which succeeds Grantee in accordance with the provisions of this Agreement.
- 2.25 **Gross Revenues** means any and all consideration of any kind or nature, including without limitation, cash, credit, property, and in kind contributions (services and goods) or other consideration received directly or indirectly by Grantee from or in connection with the operation of a Cable System in the City of Bexley under this Agreement, including, but not limited to, basic services fees, premium services fees, pay-per-view fees, installation or reconnection fees, late fees, additional outlet charges, leased channel fees and production fees, or other consideration received from programmers (exclusive of payments in support of marketing). Traditional advertising revenues and revenues from home shopping channels and like services in which goods or services are purchased by subscribers utilizing the system which are not ordered, delivered to or on behalf of the subscribers via the system shall not be included in Gross Revenues, provided, however, that "Infomercials" and rental or

lease payments for programming or channel time and like revenues are not classified as advertising revenue. Gross Revenue does not include any revenue not actually received even if billed. (Such as bad debt.) This sum shall be the basis for computing the fee imposed pursuant to Section 4.3 hereof. This sum shall not include any taxes or fees on Cable Services furnished by an operator which are imposed upon any subscriber or user by the state, county, city or other governmental unit and collected by the operator on behalf of said governmental unit. The City reserves the right to charge the Grantee any Franchise Fee, tax, or other assessment on interactive services, provided that such Franchise Fee, tax or other assessment is generally applicable to all other providers of the similar services. Other than adjustments of subscriber refunds, there shall be no other deductions from this sum unless specified herein. Gross revenues shall also include revenues received by an operator's affiliates, subsidiaries, parent, or any person in which an operator has a financial interest, arising from or in connection with the operation of a Cable television system within the City of Bexley where such revenue was diverted by the operator in such a manner as to lower Gross Revenues and therefore the amount of Franchise Fees paid hereunder.

- 2.26 **Input Device** means any device used for the reception of any Cable service.
- 2.27 **Installation** means the act of connecting the Cable System from the feeder cable to the subscriber terminal so the subscriber may receive the Cable Service.
- 2.28 **Noncable Service** means any service distributed over the Cable System other than Cable Service.
- 2.29 **PEG** - "Public, Educational, Governmental Access Channel", or "PEG Access Channel" means the channel(s) on the Cable System, which are reserved for non-commercial public, educational and governmental uses, in accordance with applicable law and with the rules and procedures established by the City of Bexley.
- 2.30 **Person** means any natural person, individual, partnership, association, firm, joint venture, joint stock company, trust, corporation, limited liability company, private or public, whether for-profit or not for profit, or legally recognized entity, or governmental entity.
- 2.31 **Public Property** means any real property owned by or under the control of any government unit.

- 2.32 "**Resident**" means any person residing in the City as otherwise determined by applicable law.
- 2.33 "**Right-of-Way**" means the surface, the air space above the surface, and the area below the surface of any public way including but not limited to; streets, highways, lanes, paths, alleys, sidewalks, boulevards, roads, freeways, parkways, drives, bridges, tunnels, easements or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of a Cable System. Network. No reference in this Franchise to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System, and the Grantee shall be deemed to gain only those rights which the City has the right and power to give thereon now or hereafter held by the City which may be utilized for the purpose of installing and maintaining Grantee's Cable System.
- 2.34 "**School**" means the Bexley School District and any private schools within the City of Bexley, which are accredited by the State of Ohio.
- 2.35 "**Section**" means any section, subsection or provision of this Agreement.
- 2.36 "**Service area**" means all of the incorporated area of City of Bexley.
- 2.37 "**Service Interruption or Outage**" means a Cable System malfunction resulting in the loss of picture or sound on one or more channels affecting more than one subscriber.
- 2.38 "**Signal**" means any transmission of radio frequency energy or of optical information.
- 2.39 "**Street**" means the surface and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, or any public easement or right-of-way now or hereafter held by the City of Bexley.
- 2.40 "**Subscriber**" means a member of the general public who lawfully receives Cable or Noncable Service distributed by a Cable System.
- 2.41 "**Subscriber Network**" means a broadband communications network dedicated primarily for the purpose of distributing video programming to home subscribers,

and the secondary purpose of providing, receiving, amplifying or distributing audio, video, digital or other forms of electronic or electrical signals to subscribers.

2.42 "**Video programming**" means programming provided by or generally considered comparable to programming provided by a television broadcast station.

2.43 "**Year**" means a full calendar year.

Section 3 GRANT OF FRANCHISE:

- 3.1 **Grant.** Grantee is hereby granted for itself, its successors, and assigns, subject to the terms and conditions of this Agreement, a Franchise, and the authority, right, and privilege, for a fifteen (15) year period from and after the Effective Date of the Franchise. This Franchise grants the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use, and operate in, along, across, on, over, though, above, and under the streets, and Right-of-Way and public places within the City of Bexley, as the same now or in the future may exist, a Cable System to provide Cable Service.
- 3.2 **Grant of Secondary Use** Grantee shall not allow the use of its system as described by exhibit C: by any service provider (including cable television), unless the service provider warrants that it has obtained all authorizations required by the City of Bexley in order to provide such service. Grantee or Affiliates shall not install or construct facilities within the City of Bexley's Public Right-of-Way to be used for services which are not authorized by this Franchise or by applicable law or another franchise or agreement from the City of Bexley.
- 3.3 **Right of the City to Issue Franchise.** Grantee acknowledges and accepts the right of the City of Bexley to issue a Franchise.
- 3.4 **Consent Not Exclusive.** The Consent granted hereunder is expressly conditioned upon the reservation by the City of Bexley of the right through its proper officers, to grant to other persons or corporations, rights, privileges, or authority herein set forth, in the same or other streets and Right-of-Way. All such future grants shall be on similar, but not necessarily identical terms and conditions.

3.5 **Franchise Acceptance.**

3.5.1 Grantee, by executing this Agreement, accepts the Franchise granted herein, and agrees to be bound by, and guarantees the performance of all the terms and conditions contained herein.

3.5.2 Grantee, by accepting the Franchise, acknowledges that it has not been induced to accept the same by any promise, oral or written, by or on behalf of the City of Bexley or by any third person regarding any term or condition imposed by law or this Agreement, not contained herein. Grantee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding receipt of the Franchise.

3.6 **Rights Reserved to the City.** The City of Bexley shall have the right to exercise its governmental powers, now or hereafter, to the full extent that the powers may be vested in or granted to the City of Bexley. The Grantee acknowledges that its rights hereunder are subject to the power of the City of Bexley to enact or enforce any consumer protection laws of general applicability not inconsistent with other laws or this Franchise.

3.7 **Incorporation by Reference of Exhibits.** Exhibits A, B and C attached hereto are hereby incorporated and made a part of this Agreement.

Section 4 GENERAL REQUIREMENTS

4.1 **Police Powers.** Grantee's rights are subject to the police powers of the City of Bexley to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances duly enacted by the City of Bexley pursuant to that power which are not in conflict with this Agreement.

4.2 **Authority for Use of Streets**

4.2.1 For the purpose of constructing, operating, and maintaining the Cable System, Grantee may erect, install, construct, repair, relocate, reconstruct and retain in, on, over, under, upon, across, along, the streets within the City of Bexley such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and

appurtenant to the operation of the Cable System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

- 4.2.2 Prior to any material (non-emergency) construction, reconstruction or any modification or change of the Cable System - which includes any work which could:
- A. Result in an interruption of Cable System services lasting more than three (3) hours.
 - B. Result in a significant hindrance to traffic on the streets which is reasonably foreseeable.
 - C. Interfere with delivery of any utility service in the City of Bexley.
 - D. Create a public nuisance or safety hazard.

Grantee shall, in each case, file with the City of Bexley and receive written approval of such plans, which approval shall not be unreasonably withheld.

- 4.2.3 Grantee shall operate and maintain the Cable System in compliance with the terms and conditions of this agreement and so as not to interfere with other uses of streets, and public Rights-of-Ways. Nothing in this franchise shall authorize Grantee to attach any part of its Cable System to the City of Bexley infrastructure or to use any City-owned conduits or facilities until Grantee has entered into a separate agreement with the City of Bexley, supported by independent consideration, for such rights of attachment or use.
- 4.2.4 The City of Bexley shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of Grantee, any wires and fixtures desired by the City of Bexley to the extent that such use and maintenance does not interfere with existing and future operations of Grantee and so long as City is not externally providing services for a fee that compete with Grantee. In a case of a denial to the City of Bexley on a request to use the Grantee's facilities, a written report must be submitted to the City of Bexley showing just cause for the denial.

4.3 **Franchise Fee.** Grantee shall pay to the City of Bexley an annual Franchise fee of up to five percent (5%) of annual Gross Revenues; currently the franchise fee is three percent (3%). The annual Franchise fee shall be payable semi-annually. Grantee's fiscal payment of the semi-annual Franchise fee shall extend from January 1 to June 30 for the 1st half of year; from July 1 to December 31 for the 2nd half. Payment shall be received within forty-five (45) days after the end of each halves stipulated herein. Commencing on the one-year anniversary of the Effective Date of the Agreement, Grantee shall file with the City within forty-five (45) days after the expiration of each of the halves stipulated herein, a financial statement clearly showing the gross revenues of Grantee during the preceding half. Grantee shall also file with the City of Bexley within one-hundred twenty (120) days after the expiration of the 2nd half, an annual report, prepared and certified by an authorized officer showing the yearly total gross revenues, included with the statement will be a schedule showing the current rates and fees being charged for every tier of service being provided in the franchise area. Additionally the Grantee will provide the exact number of subscribers for basic service and the number of subscribers for enhanced service within the Franchise area.

4.3.1 The City of Bexley shall have the right to audit and correct any deficiencies in any amounts determined to be payable in satisfaction of the annual Franchise fee. Any additional amount due the City of Bexley as a result of the audit shall be paid by Grantee within thirty (30) days after Grantee receives a written notice from the City of Bexley. The written notice shall include a copy of the audit report. Grantee shall pay the cost of the audit if the City of Bexley determines that the annual payment to the City of Bexley for the preceding year is thereby increased by more than five percent (5%).

4.3.2 In the event that payment of any Franchise fee amount which has been recomputed pursuant to Section 4.3.1 of this Agreement is not made on or before the expiration of thirty (30) days following written notice by the City of Bexley, Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred (200) basis point of interest compounded daily

from the due date for payment of the recomputed amount. The prevailing prime rate shall be the prime rate of Bank One in Columbus, Ohio.

4.3.3 At any time, the City of Bexley has the right to lower or raise the Franchise fee consistent with applicable law, so long as it lowers or raises such fees for all Grantees equally and simultaneously. The City of Bexley shall provide Grantees with ninety (90) days written notice of the decrease or increase in the Franchise fee.

4.4 **Payment to City.** No acceptance by the City of Bexley of any 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 Agreement. All amounts paid to the City shall be subject to audit and correction by the City.

4.5 **Form of Payment.** Unless otherwise provided in this Agreement, all payments required by this Agreement shall be made payable by check to the order of City of Bexley c/o the Finance Director.

4.6 **Liability and Indemnity.**

4.6.1. As between the City of Bexley and Grantee, Grantee shall be responsible for any damage or loss to any real or personal property, and for injury to or death of any person arising out of or in connection with the construction, operation, maintenance, repair or removal of the Cable System, or in respect to any of its activities or the activities of any of its subcontractors within the scope of the provision of Cable Service. Unless the City of Bexley is solely responsible for any loss of or damage to property, Grantee shall replace, repair or restore all such property to its prior condition within a reasonable time and at its own expense.

4.6.2. Except as caused solely by its own actions or omissions or those of its officers, agents, or employees, the City of Bexley, its officers, employees, and agents shall not be liable for any loss or damage to any person, arising out of or in connection with the construction, operation, maintenance, repair, or removal of the Cable System, or in respect to any activity within the scope of the provision of Cable service.

- 4.6.3. The City of Bexley may remove or damage Grantee's facilities in the case of fire, disaster, or other emergency, as determined by the Service Director or his/her designee. In such event neither the City of Bexley nor any agent thereof shall be liable to Grantee for any damage caused to Grantee's facilities other than to the extent permitted or provided by law.
- 4.6.4. Except for any emergency, the City of Bexley shall provide reasonable notification to Grantee prior to breaking through, movement, removal, alteration or relocation of any part of the Cable System, the City of Bexley shall also provide Grantee with the opportunity to perform such action on behalf of the City of Bexley. Other than to the extent permitted or provided by law, the City of Bexley shall not be liable to Grantee for any damage or loss caused to any facility under the control of Grantee, as a result of protection, breaking through, movement, removal, alteration, or relocation of any part of the Cable System by or on behalf of Grantee or the City of Bexley in connection with any emergency, public work or public improvement.
- 4.6.5. Other than to the extent permitted or provided by law, the City of Bexley, its officers, employees, and agents shall not be liable to Grantee for any damages that may be incurred by Grantee as a result of the City's lawful exercise of any right vested pursuant to this Agreement, or other applicable laws.
- 4.6.6 Grantee shall, at its sole cost and expense, indemnify and hold harmless the City of Bexley, its committee members, officers, boards, commissions, agents, and employees against any and all claims, suits, causes of action, proceedings, and judgments for damages and costs and expenses related thereto, arising out of Cable Services delivered by Grantee, or the failure by Grantee to provide Cable Services.

Indemnified expenses under this Section shall include, but not be limited to, all out-of-pocket expenses, such as reasonable attorney's fees. The indemnity contained herein is conditioned upon:

- A. The City of Bexley or other indemnified party giving Grantee adequate notice of the receipt of notice of suit, such as, service

upon the City of Bexley or other indemnified party of any suit or action covered by the terms of this Section and prior to settlement of any claim, suit or action.

- B. Affording Grantee the opportunity to participate in and fully control any compromise, defense, settlement or other resolution or disposition of such claim or proceeding;
- C. Fully cooperating in the defense of such claim and make available to Grantee all pertinent information under its control relating thereto.

4.7 Insurance.

4.7.1 At all times during the term of this Agreement, including any time for removal of facilities or management, Grantee shall obtain, maintain and pay all premiums for all insurance policies described in this Section. Within thirty days prior to any construction and/or operation of the Cable System granted hereunder, Grantee shall file with the City of Bexley certificates of insurance. Such policies shall designate the City of Bexley as an additional named insured. Failure to obtain and maintain any insurance policy required by this Section shall be deemed a material breach of this Agreement and may be grounds for termination pursuant to Section 4.12 of this Agreement.

A. Property Damage Liability. Three Million Dollars (\$3,000,000) per occurrence. The property damage insurance required by this Section shall indemnify, defend, and hold harmless Grantee and the City of Bexley and the respective committee members, officers, boards, commissions, agents, and employees of each from and against all claims made by any person for property damage caused by the operation of Grantee under the Franchise herein granted or alleged to have been so caused or alleged to have occurred.

B. Commercial General Liability. Three Million Dollars (\$3,000,000) per occurrence. The Commercial General Liability insurance required by this Section shall indemnify, defend, and

hold harmless Grantee and the City of Bexley and the respective board members, officers, boards, commissions, agents, and employees of each from any and all claims made by any person on account of injury to, or death of a person or persons caused by the operations of Grantee under the Agreement herein granted or alleged to have been so caused or alleged to have occurred.

C. Worker Compensation. Grantee shall meet all requirements of all applicable Ohio worker compensation laws and submit to the City of Bexley proof that satisfactory worker compensation policies or self insurance is in force if requested.

4.8 Performance and Payment Bond

- 4.8.1 At the time the Franchise is accepted, Grantee shall furnish and file with the City a performance and payment bond. The bond shall run to the City in the penal sum of twenty thousand dollars (\$20,000.00). The bond shall be conditioned upon the faithful performance of Grantee of all terms and conditions of this Franchise. The company providing such bond must be licensed to do business in the State of Ohio.
- 4.8.2 A Performance and Payment Bond shall be available to the City of Bexley for the payment of any liquidated damages assessed against the Grantee pursuant to Section 9.1
- 4.8.3 After having followed the procedures set forth in 9.1 herein, the City may withdraw funds from the Performance and Payment Bond only if the Grantee fails or refuses to pay the City of Bexley the amount of any liquidated damages due and owing to the City of Bexley under this Agreement within thirty days after receipt of written demand from the City of Bexley.
- 4.8.4. The Performance Bond shall serve as security for:
 - A. The faithful performance by the Grantee of each and every term, condition, and obligations of this franchise, and to cure any violation which can be cured through payment;

- B. Any expenditure, damage or loss incurred by the City of Bexley occasioned by the Grantee's failure to comply with the terms and conditions of this franchise;
- C. The payment of the franchise fee required hereunder;
- D. The payment of premiums for the liability insurance required hereunder;
- E. Any removal of the System ordered by the City of Bexley;
- F. Any costs, losses, or damages incurred by the City of Bexley as a result of default of the Grantee's obligation under this franchise.

4.8.5 If a court determines that the City of Bexley makes an improper withdraw from the Performance and Payment Bond, The City of Bexley shall restore the improperly withdrawn amount to the Bond.

4.8.6 The rights reserved by the City of Bexley with respect to the Performance and Payment Bond are in addition to all other rights the City may have under the franchise or any other law.

4.8.7 The Performance and Payment Bond shall be subject to the approval of the City of Bexley and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be canceled without the consent of the City of Bexley until sixty (60) days after receipt by the City of Bexley by registered mail, return receipt requested, of a written notice of intent to cancel or not to renew."

4.8.8 The Performance and Payment Bond shall be maintain during the term of this franchise, failure to do so shall be deemed a material breach of this Agreement and may be grounds for termination pursuant to Section 4.12 of this Agreement.

4.9 **Occupancy of Right-of-Ways.**

4.9.1. Nothing in this Agreement shall abrogate the right of the City of Bexley to the extent required or permitted by law to perform any public works or public improvement of any description. In the event the Cable System interferes with the construction, operation, maintenance, or repair of such public works or public projects the Grantee shall, protect or promptly alter or relocate the Cable System, or any part thereof, as

directed by the Service Director or the Information Systems Manager at Grantee's own expense.

- 4.9.2. Nothing in this Agreement shall be construed as a waiver or release of the right of the City of Bexley in or to Right-of-Ways within the City of Bexley. In the event that all or part of a Right-of-Way is eliminated, discontinued, and closed, all rights and privileges granted pursuant to this Agreement with respect to said Right-of-Way, or any part thereof so eliminated, discontinued and closed, shall cease upon the Effective Date of the ordinance in which said Right-of-Way, or any part thereof is ordered vacated. The City of Bexley Information Systems Manager shall review all applications to vacate all or part of a Right-of-Way. Where such applications affect the rights and privileges granted hereunder shall, be reviewed and as appropriate, make such recommendations regarding the proposed closing to protect and promote the public interest in cable system services.
- 4.9.3. All excavation work performed by Grantee in any Right-of-Way shall be subject to all applicable laws, rules, and regulations of the City of Bexley or any agency thereof. Unless otherwise provided, nothing in this Agreement shall be deemed to relieve Grantee of the obligation to obtain all permits, licenses, authorizations, and approvals, or to meet any condition or requirement of any law, rule, or regulation of general applicability in respect to the use, installation, construction, repair, removal, or maintenance of Grantee's facilities in, on, under, or above the Right-of-Ways within the City of Bexley.
- 4.9.4. Grantee shall utilize existing poles, conduits, and other facilities whenever practicable, and shall not construct or install any new, different, or additional poles, conduits, or other facilities until the written approval of the City of Bexley is obtained.
- 4.9.5. Provided a minimum of 48 hours prior notice is given to the City of Bexley, Grantee shall have the authority to prune trees on public property at its own expense as may be reasonably necessary to protect its wire and facilities, subject to prior approval and meeting the pruning

standards set by the City of Bexley Parks Department Supervisor. Trimming of trees on private property shall require consent of the property owner. The Grantee shall fully compensate the City of Bexley or property owner for any damages caused by such trimmings.

4.9.6. In no event shall this Section be construed to limit the right of the City of Bexley to correct violations of this Agreement after giving Grantee appropriate notice of and reasonable opportunity to cure such violation.

4.10 Sale, Transfer or Assignment.

4.10.1. The Agreement granted hereunder shall be a privilege to be held in personal trust by Grantee. It shall not be assigned, transferred, sold, or disposed of, in whole or in part, by voluntary sale, merger, consolidation, or otherwise by forced or involuntary sale, without the prior consent of the City of Bexley, which shall not be unreasonably withheld. The City of Bexley may consider the following factors in the determining whether to grant or withhold consent:

- A. Adequacy of financial resources to perform the contract, or the ability to obtain them;
- B. Ability to perform in timely manner, considering all existing commitments;
- C. Existence of satisfactory performance records of future Grantee;
- D. Existence of satisfactory record of integrity and business ethics;
- E. Existence of necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- F. Existence of the necessary construction, technical equipment and facilities, or the ability to obtain them; and
- G. Qualification and eligibility to receive this Agreement under applicable laws and regulations.
- H. Grantee's compliance with this Agreement and all existing laws and regulations of the City of Bexley, the State of Ohio, the Federal Communications Commission, and the United States of America as of the date of consent.

The City may take legal or equitable action to set aside, annul, revoke, or cancel the transfer of the Franchise, if the transfer violates any material provision of this Agreement. A transfer which violates any material provision shall be deemed a material breach of this Agreement and may be grounds for termination pursuant to Section 4.12 of this Agreement.

- 4.10.2. No person who has a Controlling Interest in the Grantee shall transfer, sell, assign, or otherwise dispose of its or his interest so that control of the Grantee is transferred without the prior consent of the City of Bexley which consent shall not be unreasonably withheld. The City of Bexley may take legal or equitable action to set aside, annul, revoke, or cancel the transfer of the ownership interest, if the transfer is not made according to this Agreement.
- 4.10.3. Any sale, transfer, or assignment proposed by Grantee shall be preceded by formal written notification, referring to this Section, which shall be filed with the City of Bexley at least ninety (90) days prior to any proposed sale, transfer or assignment
- A. The City shall reply in writing within thirty (30) days of the request and shall indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the City of Bexley or its customers.
 - B. If a public hearing is deemed necessary, such hearing shall be conducted within thirty (30) days of such a determination and notice of any such hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof.
 - C. Within thirty (30) days after the closing of the public hearing, the City of Bexley shall approve or deny in writing the transfer request. Such approval shall not be unreasonably withheld.
- 4.10.4. The proposed assignee must be able to provide proof of financial, legal, technical, and, as to controlling persons, character qualification, as well as, for non-public companies, a complete disclosure of all those persons holding an ownership interest in the proposed assignee.

4.10.5. In no event shall consent to transfer be required in the event of a transfer or assignment to an entity controlling, controlled by or under the same control as Grantee. In any proceeding pursuant to this section, Grantee must demonstrate that the transfer or assignment is to an entity controlling, controlled by or under the same common control as Grantee or prior approval of the City of Bexley is required.

4.11 Foreclosure, Receivership and Abandonment.

4.11.1 Foreclosure. Upon the foreclosure or other judicial sale of the Cable System, Grantee shall promptly notify the City of Bexley of such fact and such notification shall be treated as a notification that the Franchise has been transferred and Section 4.10 "Sale, Transfer or Assignment." of this agreement shall apply without regard to how such transfer occurred.

4.11.2 Receivership. The City of Bexley has the right to cancel the Agreement and revoke the Franchise pursuant to Section 4.12, subject to any applicable provisions of federal and state laws, including Bankruptcy Code, one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, unless:

A. Within one hundred twenty (120) days after his election or appointment such receiver or trustee shall have fully complied with all provisions of this agreement and remedied all defaults thereunder: and

B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this agreement.

4.12 Franchise Termination and Renewal.

4.12.1 Termination. In addition to any grounds for termination provided in the Cable Act, the following constitutes grounds for termination of the Franchise in accordance with Section 4.12.3(A):

- A. Bankruptcy of Grantee;
- B. Practice of any fraud or willful misrepresentation of any material fact upon the City of Bexley or subscribers by Grantee.

4.12.2 Termination After Opportunity to Correct. The following constitutes grounds for termination of the Franchise Agreement after completion of the procedures set forth in Section 4.12.3(B):

- A. Failure, refusal, or neglect to construct, conduct, operate, cooperate, or maintain the Cable System to comply substantially with the material terms of this Agreement;
- B. Failure, refusal, or neglect to comply substantially with the conditions of street occupancy;
- C. Arbitrary or capricious discontinuance of Cable Service to subscribers;
- D. Insolvency or inability of Grantee to pay its debts;
- E. Failure to pay and/or provide to the City of Bexley any Franchise fees, financial obligation, Cable service, or benefits provided under this Agreement, or pay any damages, costs, or expenses which the City of Bexley is compelled to pay by reason of any act or default of Grantee in connection with this Franchise; or
- F. Other violations, of one or more material terms, and conditions of this Agreement.

4.12.3 Procedures for Termination.

A. Non Compliance Under Section 4.12.1.

Upon a preliminary finding by the City of Bexley of grounds under Section 4.12.1, written notice shall be given to the Franchisee of intent to terminate the Franchise, stating the reasons; and a public hearing will be held and Grantee shall be afforded an opportunity

to present evidence on its behalf at such hearing. Upon completion of the hearing the City of Bexley shall, within a reasonable time, take action on the issue of whether to terminate the Franchise.

B. Non-Compliance Under Section 4.12.2.

(1) **Notice.** For those acts of non-compliance set forth in Section 4.12.2 of this Agreement, the City of Bexley shall notify Grantee in writing of the nature and facts of the non-compliance and shall advise Grantee that it must correct such non-compliance within:

- (a) Thirty (30) days after receipt for failure to pay and/or provide to the City of Bexley any Franchise fee, financial obligation, Cable service or benefit, of this Agreement, or any damages, costs, or expenses which the City of Bexley is compelled to pay by reason of any act or default of Grantee in connection with this Franchise;
- (b) Thirty (30) days after receipt of notice for any other violations set forth in Section 4.12.2 of this Agreement, the City of Bexley shall extend the period for correction if it determines that correction cannot be accomplished within the applicable time period specified above due to the inherent nature of the non-compliance.

(2) **Actions by City.** Upon a finding by the Service Director and/or the Information Systems Manager that Grantee has materially breached the terms and conditions of this Agreement for one or more grounds set forth in Section 4.12.2 and that Grantee has previously been given notice and has failed to take corrective actions as required by the City of Bexley, the City of Bexley may terminate the Franchise. Prior to action by the City of Bexley to

terminate this Franchise, Grantee shall be afforded an opportunity to appear before the Bexley City Council at a hearing, which shall be open to the public. At least ten (10) days prior to such hearing, the City of Bexley shall notify Grantee of the time and place of the hearing and shall provide Grantee with a written statement of documents, testimony or other evidence expected to be considered at the hearing. Grantee shall be afforded an opportunity to present evidence on its behalf at such hearing; provided, however that judicial rules of evidence shall not apply to either party with regard to evidence or material which may be considered at the hearing. Notice of the hearing shall be published at least ten (10) days prior to hearing in a newspaper of general circulation within the City of Bexley, and such notice shall include a statement of the opportunity for public comment at the hearing. Upon completion of the hearing the City of Bexley shall, within a reasonable time, take action on the issue of whether to terminate the Franchise.

4.12.4 Grantee's Termination Obligations. Should the City of Bexley decide to terminate the Franchise following the procedure in Section 4.12, or Grantee is not granted a renewal of the Franchise, Grantee shall continue to operate the Cable System under the terms of this Franchise for a period not to exceed six (6) months.

4.12.5 Renewal. The City of Bexley and Grantee agree that any proceedings undertaken by the City of Bexley relating to the renewal or extension of the Franchise shall be governed by and comply with the provisions of the Cable Act in effect at the time of the renewal request. In the event the procedures and substantive protections set forth therein are preempted and/or superseded by the provisions of any subsequent federal or state law, or such renewal provisions are deemed inapplicable or null and void, the City of Bexley retains the right to establish substantive and

procedural rights, governing any request by the Grantee for renewal of extension of the Franchise, to the extent permitted by law.

Concurrent with a request for renewal of the Franchise under the provisions of this Franchise and the Cable Act, the City of Bexley may undertake a study of future cable-related community needs and interests. The Grantee shall assist the City of Bexley, upon request of the City of Bexley, in preparing the study of such future cable-related needs and interest. The City of Bexley may determine that the study should be conducted by an independent consultant at the City's expense.

4.13 Business/Operations Records and Reports.

4.13.1 The Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books and records shall be consistent with generally accepted accounting practices and such information shall be made available for inspection by the City of Bexley or its designee. All such books and records shall be retained in Grantee's files not less than three years.

The City of Bexley or its designee shall have the authority to examine, review, audit and obtain copies of papers, books, accounts, documents, plans and other records of the Grantee at reasonable times and for reasonable purposes to enforce this Agreement. Such information shall be made available during normal business hours and upon reasonable notice to Grantee. In addition, the City of Bexley shall have the right to reasonably inspect, the plant, equipment, and other property of the Grantee within its jurisdiction. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities. City of Bexley shall preserve the confidentiality of information disclosed to it by the Grantee to the extent permissible by law.

4.13.2 Copies of Grantee's schedule of charges, contract or application forms for basic Cable Service, policy regarding the processing of subscriber complaints, delinquent subscriber, disconnect and reconnect procedures, and any other terms and conditions adopted as Grantee's policy in

connection with its subscribers shall be filed with the City of Bexley upon request of the City. Grantee shall maintain work orders including all material subscriber complaints received, corrective actions completed and all performance tests undertaken, and shall file with the City of Bexley upon request an annual summary of such work orders.

4.13.3 Within ninety (90) days after the close of Grantee's fiscal year, the Grantee shall submit a written annual report in a form reasonably accepted by the City of Bexley, including, the information in (A) below, and, if requested by the City of Bexley, Grantee shall make available to the City the information in (B), (C), (D) and (E) below:

- A. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of subscribers for each tier of Cable Service;
- B. A list of stockholders or other equity investors holding ten percent (10%) or more of the voting interest in the Grantee, as well as the percentage interest held by each equity investor.
- C. An annual shareholders report if Grantee is a publicly traded entity.
- D. A financial statement for the Bexley Cable System on an allocated basis. Notwithstanding the above, Grantee shall not be required to provide the reports set forth in this paragraph (D) unless Grantee has:
 - 1. requested a change in rates and requiring the prior consent of the City of Bexley and such information is reasonably necessary; or
 - 2. requested a franchise amendment in which the financial condition of Grantee or the financial feasibility of the requested amendment is an issue; or
 - 3. received a request from the City of Bexley where such information is necessary for the enforcement or

administration of the franchise. The Parties acknowledge and agree that the information to be supplied by Grantee to the City of Bexley pursuant to the provisions of this Section 4.13.3.D shall be supplied by Grantee providing the City of Bexley with access to such information at Grantee's offices for the City's review of such information.

E. A list of all lessees.

4.13.4 Upon request of the City of Bexley, the Grantee shall submit to the City of Bexley copies of all pleadings and applications submitted by the Grantee to, as well as copies of all non-routine decisions, correspondence and actions by, any Federal, State and Local courts and State or Federal regulatory agency or commission specifically relating to its Franklin County cable system operations. Any such information that Grantee believes to be proprietary and confidential in nature shall be made available for review by City of Bexley officials at Grantee's offices.

4.14 **Consent Commitments.** Notwithstanding any other provision of this Agreement, Grantee will fully abide by the provision of this Agreement unless otherwise directed by a Federal, State or City agency or court to refrain from abiding by these provisions.

4.15 **Form of Notice.** Unless otherwise specified, any notices, reports or demands shall be required to be given in writing and shall be deposited in the United States postal service in a sealed envelope, with certified mail postage prepaid thereon, or by express mail or an overnight air courier addressed to the party to which notice is being given, as follows:

If to City of Bexley:

City of Bexley, Ohio
2242 E. Main Street
Bexley, Ohio 43209
Attn: Service Director

If to Time Warner Communications: President
Time Warner Communications
1266 Dublin Road
Columbus, Ohio 43215

- 4.16 **Supervision of the Franchise.** It shall be the right of the City of Bexley at all times to be kept fully informed as to all matters in connection with or affecting the construction, reconstruction, maintenance, operation, and repair of the properties of the Grantee, and the conduct of the Grantee's business in the City of Bexley and of Cable and Non-Cable Service being rendered by the Grantee. Grantee shall use its best efforts to keep the City of Bexley, through the City of Bexley Information Systems Manager, fully informed of any effective changes in Federal law that has a material effect on the operation of the Cable system in the City of Bexley.
- 4.17 **Payment Center.** Grantee will make reasonable efforts to maintain, at a minimum, one payment center in Bexley, at which Bexley customers may, at a minimum, make payments.

Section 5 CONSTRUCTION AND SERVICE REQUIREMENTS.

- 5.1 **General.** Grantee agrees to construct, operate, and maintain the Cable System subject to supervision and inspection by the City of Bexley and in full compliance with the regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal, state and local laws and regulations, including the latest editions of the National Electrical Safety Code and the City of Bexley Right-of-Way ordinance. Grantee agrees to use its best faith efforts to coordinate its work with the Ohio Utility Protection Service (OUPS). Grantee also agrees to place all new underground distribution cable at least twenty-four (24) inches deep unless otherwise directed and agrees to locate all underground cable with seventy-two (72) hours notice.
- 5.2 **Service Area.** Grantee shall have the right and the obligation to serve all dwelling units in the City of Bexley.

- 5.3 **Right of Inspection of Construction.** The City of Bexley shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of law.
- 5.4 **Right to Ascertain Technical Performance.**
- 5.4.1 In order to ascertain the continuing technical performance of the Cable System, the City of Bexley shall conduct technical evaluations whenever it reasonably determines it necessary.
- 5.4.2 The City of Bexley retains the right at all times to conduct technical and/or operational evaluations of the system if the City of Bexley believes that reasonable justification exists to warrant said evaluations. The City of Bexley shall bear the total expense for said evaluations.
- 5.5 **Work Performed by Others.** Grantee will provide the City of Bexley with at least five (5) business days advance notice to the extent possible before any person other than Grantee performs services pursuant to this agreement, including, without limitation, the right to perform any construction or repair upon the Right-of-Way the notice must include the identity of any such person, provided, however, that all provisions of this agreement shall remain the responsibility of Grantee, and Grantee shall be responsible for and hold harmless the City of Bexley for any claims or liability arising out of work performed by persons other than Grantee.
- 5.6 **Facilities Maps.** Grantee shall provide the City of Bexley with accurate maps certifying the location of all of Grantee's facilities within the City of Bexley's public Right-of-Way. The Maps shall be in both paper and digital form and shall be update d annually upon the Franchise Effective Date anniversary. The City of Bexley Information System Manager and Grantee will mutually determine the format of the computer readable maps.
- 5.7 **As Built Drawing.** Grantee shall furnish the City of Bexley with a complete set of plans, drawn to scale and certified as accurate, depicting the location of all Cable System facilities constructed. The as-built drawings shall be both in paper and computer readable format. The City of Bexley Information System Manager and Grantee will mutually determine the format of the computer readable maps.

Section 6 SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.

- 6.1 **System Configuration and Construction Schedule.** The Cable System shall consist of a subscriber network. This network shall have bi-directional communications capability in its configuration. Completion of Construction shall occur no later than December 31, 2000.
- 6.2 **Channel Capacity.** Grantee shall construct the Cable System with a capacity of not less than 750 Megahertz (Mhz), and be capable of delivering 110 video channels and be programmed to at least 48 channels.
- 6.3 **Addressability.** The Grantee shall make available to all subscribers technology which will, among other things, enable subscribers to receive pay-per-view programming. Using the addressable technology, programming changes may be accomplished without waiting for a cable technician to be dispatched.
- 6.4 **Interconnection.** Grantee will fully cooperate with any regional interconnection authority or city, county, state or federal agency, which may be established for the purpose of providing for the interconnection of Cable Systems beyond the boundaries of the City of Bexley.
- Upon request by the City of Bexley, Grantee shall interconnect the Grantee's Cable System with other Cable Systems in Bexley to distribute Bexley government and educational programming. Within six (6) months of a request by the City of Bexley, Grantee shall report in writing to the City the status of the Cable Systems interconnection. Grantee shall share the costs involved for the interconnection of Cable Systems. At the City's request, Grantee shall provide to the City of Bexley an estimate of the impact of the costs required to interconnect with other Cable Systems on the monthly basic service rate.
- 6.5 **Emergency Override.** In the case of any emergency or disaster, the Grantee shall comply with Federal Emergency Alert System (EAS) regulations, as promulgated by the FCC.
- 6.6 **Standby Power.** Grantee shall provide standby power generating capacity at the Cable system control center and at all hubs. These battery packs will provide operating power to the cable. Grantee shall provide standby power, for critical system elements, for a minimum of two (2) hours of continuous operation at 0 degrees Fahrenheit in the event of commercial power failure. Since battery efficiency

is a function of temperature, the specification is therefore rated at 0 degrees Fahrenheit.

- 6.7 **Parental Control Lock.** Grantee shall make available a parental control device that will allow the subscriber to restrict the reception of any channel.
- 6.8 **Service to Public Buildings.** The Grantee shall provide one free installation to the subscriber network and free monthly service to one outlet in all schools, City government buildings, fire stations, police stations and public libraries, which are passed by Grantee's cable. Installation of additional outlets shall be provided at direct cost.
- 6.9 **Technical Standards.** The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), shall apply. Grantee shall, at all times, comply with the technical standards and testing procedures, set forth by the FCC.
- 6.10 **Tests and Performance Monitoring.**

6.10.1. At its sole expense, the City of Bexley may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether Grantee is in compliance with this Agreement. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In addition to the City's authority to perform technical tests, the City of Bexley, for good cause, shall have the right and authority to require the Grantee to periodically test, analyze, and report on the performance of the system. The City of Bexley may require, for good cause, that the tests be supervised by a professional engineer or an engineer with proper training and experience approved by the City of Bexley, not on the permanent staff of the Grantee. The City's right to require Grantee to perform such additional tests shall include requiring tests, analysis and reports covering specific subjects and characteristics based on complaints or other evidence giving the City of Bexley reasonable

grounds to believe that the complaints or evidence require tests to be performed to protect the public.

6.10.2 Quality Assurance The City of Bexley shall be provided without charge all services available to any subscriber on the Cable System within the Franchise area for the purpose of quality assurance monitoring. The monitoring station shall be located in Bexley City Hall.

6.11 Performance Evaluation Sessions/Future Needs Assessment.

6.11.1. To evaluate technological, economical, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the Cable System, and to plan for a continuing, advanced modern system, the City of Bexley and Grantee shall comply with the following system and services review provisions set forth in this section.

6.11.2. The City may require an annual performance evaluation session.

6.11.3. Each session shall be open to the public with notice of the date, time and locations of all hearings given by the City of Bexley at least thirty (30) days prior to the session. Members of the public shall be afforded an opportunity to comment at the sessions. Any materials required by the City of Bexley shall be filed in preparation for the session. Copies of all materials filed with the City Information System Manager in conjunction with this review shall be matters of public record unless deemed otherwise under applicable State law. During a review and evaluation by City of Bexley, Grantee shall fully cooperate with the City of Bexley in providing such information and documents, as City of Bexley may need to reasonably perform the review.

6.11.4. Topics which may be discussed at any scheduled or special evaluation session may include, but shall not be limited to, future needs assessment, state of the art, Cable Service rate structure, franchise fee, penalties, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to the Franchise Agreement, judicial and FCC rulings, line extension policies, Grantee's ascertainment of community needs and use

of the system, insurance requirements, and Grantee or City rules. Either the City of Bexley or the Grantee may select additional topics for review.

6.11.5 The log, which may be in the form of computer records, maintained by Grantee regarding subscriber complaints, records of performance tests, and other relevant operation and service information may be reviewed. In addition, any subscriber may submit complaints during the review meetings, either orally or in writing, and these may also be considered. Grantee shall fully cooperate with the City of Bexley in providing such information and documents, as the City of Bexley reasonably needs to perform the review. Grantee shall be represented by its general manager or his/her designee.

6.11.6 Within thirty (30) days after conclusion of the system performance review meetings, the City of Bexley shall issue written findings with respect to the adequacy of system performance and quality of Cable Service under this Agreement. If inadequacies are found, the City of Bexley may exercise its enforcement powers as required by this Agreement and applicable law.

Section 7 Services And Programming.

7.1 **General Matters.** Grantee shall provide the channel capacity, basic services, premium services and all necessary equipment for the reception of the services and programming set forth in Exhibit A attached hereto, and as otherwise required by this Agreement.

7.2 **Local Channels.** Grantee shall provide the City of Bexley with an Educational Channel and a Government Channel for its exclusive use. The two- (2) channels are not in addition to any previous commitment of such channels. Said local channels shall be programmed by the City of Bexley or its designee for distribution to all Subscribers within the City of Bexley. Grantee shall provide a fiber optic cable installation and the equipment necessary for the City to originate text and video programming on such channels from the Capital University studio facility. The City shall be responsible for obtaining any permission necessary to locate any computer server, modulation, transmission or receiving equipment at Capital University. If the

local channels equipment can not be located at Capital University, then Grantee will place the connection and equipment at Bexley City Hall.

- 7.3 **Local Channel Availability** Grantee shall make every effort to ensure that all future areas that may be annexed by the City of Bexley will also receive the City of Bexley channels and the emergency override. In the event that Grantee is unable, for technical (i.e. amplifier cascade) or financial reasons to deliver Bexley programming to these new areas, Grantee will promptly advise the City, including the reasons therefore, in writing.
- 7.4 **Advance Notice of System Upgrades.** The Grantee shall provide the City of Bexley with a minimum of six (6) months advance notice, if possible, of any significant upgrades, improvements, and enhancement to the Cable System.

Section 8 RATES AND CHARGES.

- 8.1 **Fee Schedule.** Fourteen (14) days in advance of Cable System activation, the Grantee shall provide the City of Bexley in writing the rates and charges to be initially charged by Grantee for basic service, as well as all other rates and charges. The Grantee shall give notice to the City of Bexley of any modifications to its rates and charges or additional charges thirty (30) days prior to the effective date thereof.
- 8.2 **Subscriber Rates – Conditions.**
- 8.2.1 Grantee shall publish and make available to each potential subscriber and the City of Bexley a schedule of all applicable fees and charges for providing Cable Service.
 - 8.2.2 Unless specifically authorized by law, Grantee shall not, with regard to fees, discriminate or grant any preference or advantage to any person; Grantee may, however, negotiate fees with groups of subscribers as follows; Fees may be negotiated between Grantee and the Subscribers, or a committee acting on behalf of subscribers, for service provided to multiple dwelling units within an apartment building, condominium, garden apartment, townhouse, complex under common ownership or to room units within hotels or motels; or to commercial establishments engaged in the sale of input devices.

8.2.3 Grantee may for competitive or promotional purposes and at its own discretion, waive, reduce, or suspend connection or monthly Cable Service fees for specific or indeterminate periods.

8.3 **Rate Regulations.**

8.3.1 To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended, authorize the City of Bexley to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City of Bexley shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City of Bexley.

8.3.2 If and when exercising rate regulation, the City shall consider, along with any other information it deems necessary or appropriate, the following factors in approving or disapproving a rate increase request: the ability of the Grantee to render system services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule; the revenues and profits derived from system services; the efficiency of the Grantee; the quality of the Cable Service offered by the Grantee; the fair value cost of the system less depreciation; a fair rate of return over the life of the Agreement with respect to Grantee's investment; fairness to City of Bexley residents, subscribers, and users. The City of Bexley may retain rate consultants, as it deems appropriate.

8.4 **Cable Commission.** The City of Bexley may direct the Bexley Technology Commission or establish a Cable Commission, and may delegate to it from time to time, such powers and duties as it deems appropriate if such delegation is lawful under applicable State law. Grantee shall comply with all reasonable request for information made by the Bexley Technology Commission or Cable Commission in accordance with this agreement and City Ordinances or other applicable law provided it is given no less than fourteen (14) days advance notice, and Grantee shall make a knowledgeable representative available for meetings before such Commission provided no less than fourteen (14) days advanced notice is given.

Section 9 Liquidated Damages.

9.1 **Assessment of Liquidated Damages.** Recognizing the difficulty in calculating the actual monetary damages which would be sustained by the City of Bexley in the event of default by Grantee in certain provisions of this Agreement, the City of Bexley and the Grantee agree that the following shall constitute the liquidated damage amount to be assessed against the Performance and Payment Bond that would reasonably compensate the City of Bexley for said defaults; provided, however, that beginning the third year after the Effective Date of this Franchise, each of the following amounts shall increase by five percent (5%) every three (3) years on a compounded basis. The assessment of these amounts against Grantee shall be at the sole option of the City of Bexley and in addition to any other remedies available to the City of Bexley, as specifically enumerated in this Agreement, and shall not be construed as penalties, and shall not in any event, exceed Twenty (\$20,000) Thousand Dollars in the aggregate, over the term of the Franchise.

9.1.1 For failure to do, or cure any of the following within thirty (30) days after written notice to the Grantee that performance or payment is due, the sum of One Hundred Dollars (\$100) per day, per occurrence from the date said performance or payment is due:

- A. The payment of any Franchise fee or other payments required under this Agreement to the City of Bexley.
- B. Providing equipment or the performance of any public service commitments provided in this Agreement.
- C. The performance of any testing, inspection or maintenance requirements or the providing of any reports with regard to such responsibilities as required by this Agreement.
- D. The providing of any data, documents, reports or information required by this Agreement.
- E. Compliance with operational or maintenance standards.
- F. The providing of any Cable Services and programming and the staff and equipment necessary to activate them as required in this Agreement.

G. Compliance with construction requirements unrelated to construction schedules.

9.1.2 When the failure or omission is due to an Act of God or events beyond the control of the operator, no liquidated damage or sanction of any kind shall be imposed on the franchisee.

9.1.3 Customer Service Standard Penalties. Grantee shall comply with the Customer Service "standards" set forth in Exhibit B. At the request of the City, Grantee shall report quarterly in a form mutually acceptable to the City and Grantee, its performance against the Standards.

In the event Grantee's performance in any quarter falls below the Standards, then Grantee must report what steps are being taken to meet the Standards or why corrective action is not necessary such as outages in previous quarter because of a severe storm. Grantee will then report on a monthly basis, its performance against any Standard, which was not previously met until the Standard is met. Each monthly report shall state what corrective steps are being taken.

In the event that Grantee fails to meet any Standard for two consecutive monthly reports, liquidated damage of One Hundred Dollars (\$100) per day shall be assessed. Prior to assessment, Grantee shall be afforded an opportunity to petition the City of Bexley to waive the applicable customer service standard. The liquidated damages shall continue to be assessed at the rate of One Hundred Dollars (\$100) per day until the City of Bexley is satisfied that the Standards are met.

The City of Bexley shall have the right to inspect and audit the compilation of Grantee's Standard reports. The City of Bexley may also retain independent consultants for the purpose of analyzing and auditing Grantee's Standards reports.

9.2 Underlying Obligation. It is agreed between the parties that the payment of any liquidated damages by Grantee under this provision shall be deemed as adequate compensation to the City of Bexley for the damages incurred in the delay in the performance or payment of the obligations indicated, and shall in no way be construed as relieving Grantee of the underlying obligations themselves.

Section 10 Separability.

If this Agreement or any material section thereof is determined by an appropriate government agency or judicial authority to be invalid or preempted by federal, state or local regulations or laws, all other provisions of this Agreement shall remain in effect and the City of Bexley shall have the right to modify such invalid or pre-empted section in a manner consistent with the remaining terms of the Agreement; provided, however, that no such modification shall impose upon Grantee total financial obligations in excess of those imposed upon Grantee under this Agreement.

Section 11 Force Majeure; Grantee's Inability To Perform

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement is prevented, preempted, delayed or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused and no penalties for default shall be imposed as a result thereof. Provided Grantee has notified the City of Bexley in writing within thirty (30) days of this discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, non-delivery by suppliers, technical breakdown, government administration or judicial order or regulation, civil emergencies and labor unrest or strikes.

Section 12 Subscriber And Resident Rights.

12.1 Rights of Individuals.

12.1.1 Equal Employment Procedures. Grantee shall comply at all times with all applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this Agreement.

12.1.2 Subscriber information. The City of Bexley and Grantee agree that any matter pertaining to the protection of subscriber privacy shall be governed by and comply with the provisions of the Cable Act.

12.2 **Continuity of Service Mandatory.**

12.2.1 It shall be the right of all subscribers to continue receiving Cable Service insofar as their financial and other obligations to Grantee are honored. In the event Grantee elects to rebuild, modify, or sell the system, or should the City of Bexley decide to terminate the Franchise following the procedure in Section 4.12, or Grantee is not granted a renewal of the Franchise. Grantee shall act so as to insure continuous, uninterrupted Cable Service for a period not to exceed six months.

In the event of a change of Grantee, or in the event a new operator acquires the system, Grantee shall cooperate with the City of Bexley and the new Grantee operator in maintaining continuity of Cable Service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

12.2.2 In the event Grantee fails to operate the Cable System for seven (7) consecutive days without prior approval of the City of Bexley or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores Cable Service under conditions acceptable to the City of Bexley or a permanent operator is selected. If the City of Bexley is required to fulfill this obligation for Grantee, Grantee shall reimburse the City of Bexley for all reasonable costs or damages that are the result of Grantee's failure to perform which are in excess of revenues the City of Bexley receives from the Cable System. If the City of Bexley and Grantee cannot agree as to whether the failure to operate the Cable System was with just cause, the issue of just cause shall be submitted to a court with appropriate jurisdiction.

12.3 **Grantee Rules and Regulations.** Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its obligations under this Agreement, and to assure uninterrupted Cable Service to each and all of its Subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable City,

State, and Federal laws, rules and regulations. Such rules, regulations, terms and conditions which affect Cable Service provided to subscribers shall be provided to the City upon their request.

12.4 Discontinuance of Service.

12.4.1 Disconnection Service. Grantee shall provide disconnection service for Subscribers wishing to discontinue service. Grantee shall not charge for disconnection service. Grantee shall pro-rate Subscriber's final bill from the day after the disconnect order is placed. Grantee shall restore Cable Service to Subscriber's wishing restoration, provided Subscriber shall first satisfy any previous obligation owed including any additional deposit and/or penalty assigned.

12.4.2 The Grantee may disconnect installations and discontinue service to a subscriber upon failure by the subscriber to pay his/her bill within forty-five (45) days of rendition; provided, however, the Grantee shall give at least ten (10) days written notice to such delinquent subscriber, delivered either by mail or served in person, stating that Cable Service will be discontinued unless arrearages are paid before the expiration of the forty-five (45) day period.

12.4.3 The Grantee may disconnect installations, discontinue or deny Cable Service to a person who operates or attempts to operate a input device on the Cable System for which no service fees are being paid (including the operation of more than one device when the subscriber is paying for only one outlet, or permits anyone else to do the same, or who threatens the safety of any Grantee employee.

Section 13 Service And Programming Parity.

13.1 After the Completion of Construction, Grantee agrees to program a comparable number of channels as it programs in other communities in Franklin County. Grantee also agrees to provide the comparable programs and services to Bexley, as it provides to other communities in Franklin County, except that in no event shall this Section be construed to require:

- A. The carrying in Bexley of any other communities' Public, Educational, or Governmental channels.
- B. The carrying of an Experimental Channel. For purpose of this section, "Experimental Channel" shall mean a channel, which is carried in Franklin County by Grantee but is carried for less than six (6) months.
- C. In the event City has regulatory control over Grantee's rates, the City may enforce this section only if the rates and charges in Bexley are the same or higher than another community served by Grantee in Franklin County with more channels of programming.

Section 14 Noncable Services

This Agreement shall authorize the Grantee to provide both Cable Services on the System and Noncable Services on the System. Subject to any applicable provisions of state or federal law, such authority for the Noncable services shall be conditioned upon acceptance by such Grantee of whatever terms and conditions the Bexley City Council reasonably determines are appropriate in the circumstances, it being understood and agreed that, at a minimum, such terms may include payment to the City of Bexley of compensation in respect of such Noncable Services provided that other competing providers of such Noncable Services are also required to make similar payments and comply with similar terms.

Section 15 Grants

The City of Bexley and the Grantee mutually agree that as part of the renewal of the current franchise the Grantee will provide to the City of Bexley the following, which will relieve the Grantee of any disputed obligations of the old franchise, and payment of such Grants shall not be construed as an admission of wrongdoing on the part of the Grantee.

- A) A twenty five thousand (\$25,000) dollar Grant within ninety (90) days after the effective date of the Franchise;
- B) A ten thousand (\$10,000) dollar Grant the next calendar year after the effective date of the Franchise.

Section 16 Agreement Controlling.

From and after the Effective Date hereof, this Agreement shall supersede and replace all of the terms and conditions any prior Agreement or understanding between the City of Bexley and Grantee and its predecessors.

IN WITNESS WHEREOF, the City of Bexley has caused this Contract to be executed by its proper officers pursuant to the authority granted by the City Council of the City of Bexley and the Contractor has signed this agreement by its duly authorized officer and has caused its corporate seal to be affixed hereunto the day and year first written above.

CITY OF BEXLEY:

Attest: Paul A. Levin
Clerk of Council

Jeffrey McAllister
President of Council

Approved 11/23, 1999

David H. Madison
David H. Madison
Mayor

Time Warner Communications

President
of Time Warner Communications
for Time Warner Entertainment L. P.

EXHIBIT A: SERVICE AND PROGRAMMING

Programming and Channel Tiers. The parties recognize that current law prohibits the City of Bexley from requiring specific programs on the Cable System. However, Grantee agrees to provide a broad and diverse mix and quality of programs, which shall include at least some programming in each of the following broad categories:

- ◆ Sports programming
- ◆ Local and National News programming
- ◆ General programming
- ◆ Family oriented programming
- ◆ Children's programming
- ◆ Weather programming
- ◆ Educational programming
- ◆ Movies
- ◆ Cultural programming
- ◆ Subject to applicable federal law, Local Broadcast television including securing any necessarily retransmission consents on terms acceptable to the Grantee.
- ◆ Financial Programming
- ◆ Public and Government Affairs programming

EXHIBIT B: CUSTOMER SERVICE STANDARDS

1. OFFICE HOURS AND TELEPHONE AVAILABILITY

- a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its customers 24 hours a day, seven days a week.
 - i) Trained representatives will be available to respond to customer telephone inquiries during normal business hours.
 - ii) 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 representative on the next business day.
- b) 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 percent (90%) of the time under normal operating conditions, measured on a quarterly basis.
- c) Grantee 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.
- d) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- e) Bill payment locations will be open at least during normal business hours. Grantee will make reasonable efforts to assure that bill payment locations 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 percent (95%) of the time measured on a quarterly basis:

- a) Standard installations will be performed within seven (7) business days after an order has been placed. Standard installation shall mean cable connections that are located up to 150 feet from the existing distribution system and shall not mean commercial or MDU installations, inside "wall fish" installations or buried installations, irrespective of distance, where adverse terrain (such as excessive rocky conditions) or other factors render extension of the system economically or technically more expensive or difficult than typically encountered by Grantee in its normal operations.

- b) Excluding conditions beyond its control, Grantee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes know. Grantee must begin actions to correct other service problems the next business day after notification of the service problem.
- c) 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. (Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- d) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- e) If a Grantee 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 GRANTEE AND CABLE SUBSCRIBERS

a) Notifications to Subscribers

- i) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - (a) Products and services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services;
 - (c) Installation and service maintenance policies;
 - (d) Instructions on how to use the cable service;
 - (e) Channel positions of programming carried on the system; and
 - (f) Billing and complaint procedures, including the address and telephone number of the Issuing Authority's cable office.
- ii) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph. Notwithstanding the foregoing, Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or the Issuing Authority on the transaction between Grantee and the subscriber.

b) Billing

- i) Bills will 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 optional charges, rebates and credits.
- ii) In case of a billing dispute, Grantee must respond to a written complaint from a customer within thirty (30) days.

c) Refunds. Refund checks will be issued promptly, but no later than either:

- i) The customer's next billing cycle following resolution of the request of thirty (30) days, whichever is earlier, or
- ii) The return of the equipment supplied by Grantee if service is terminated.

d) 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

- a) **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.
- b) **Normal Operating Conditions.** The term "normal operating conditions" means those service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee 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 Grantee 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.
- c) **Service Interruption.** The term "service interruption" means the loss of picture or sound on one or more cable channels.

EXHIBIT C: TIME WARNER ARCHITECTURE

Time Warner Communications Network Architecture

The Network Architecture for the Columbus Division of Time Warner Communications consists of the following major components; Master Headend, Optic Transport, Distribution Hubs, Distribution Fiber, Fiber Optic Nodes and coaxial plant.

All programming is processed at our Master Headend via off-air antenna, fiber optic feeds or TVRO antennas. The Master Headend is then connected via Optic Transport to each of the 16 Distribution Hubs in the Columbus Metropolitan area. Our Optic Transport utilizes a variety of technologies, including 1550nm Analog, ATM and Packet over Sonet to deliver services to our Distribution Hubs.

Each of our Distribution Hubs service an average of 20,000 homes. The Optic Transport equipment at each Distribution Hub is fed via redundant optic feeds for service reliability in the event of an Optic Transport failure. The Distribution Hub also houses equipment to distribute our service to the neighborhood fiber optic nodes via 1310nm distribution fiber. The fiber optic nodes convert the optical signals to a broadband 50 – 750 MHz signal for distribution onto the coaxial distribution plant that serves an average of 500 homes. The broadband signal is distributed and amplified as necessary to maintain FCC required signal levels and picture quality to the customer.

Each fiber optic node also has a RF Return amplifier to receive the signals from the terminal devices (Set top converters, Cable Modems) in the customers homes. The fiber optic node then re-transmits these signals via fiber optic connection back to the controller and server equipment at the Master Headend.

Below is a sample architecture that is used in most Time Warner Communications systems. The Columbus area architecture has 16 Distribution Hubs and one Master Headend. Bexley is served along with other areas of Columbus from one of these Distribution Hubs.

