# THE CITY OF POUGHKEEPSIE
# NEW YORK

## PUBLIC HEARING
### (PROPOSED FRANCHISE AGREEMENT WITH TIME WARNER CABLE)
## MINUTES

**Monday, OCTOBER 1, 2012 6:15 pm** **City Hall**

**Chairwoman Johnson** called the meeting to order at 6:15 p.m.

# The City of Poughkeepsie

New York

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September 24, 2012

Common Council

Re: **Time Warner Franchise Agreement**

Dear Chairwoman Johnson and Members of the Common Council:

Attached is the proposed Time Warner Franchise Agreement. As you know, the public hearing is scheduled for October 1, 2012 at 6:15 p.m.

Under the terms of this agreement, the City will receive a total of $40,000 in PEG (public education & government) money and a monthly payment of 5% (the maximum allowable under the law) of Time Warner's gross revenues. At the City's request, Time Warner increased their amount of liability insurance to 10,000,000 and amended its definition of "gross revenues" to be more specific and more in line with the Verizon Agreement.

Please let me know if you have any questions, suggestions or concerns.

Thank you,

MICHAEL BRADY, ESQ.
Assistant Corporation Counsel

**CABLE TELEVISION**
**FRANCHISE RENEWAL AGREEMENT**

**CITY OF POUGHKEEPSIE**

**THIS AGREEMENT,** executed in triplicate this _____ day of _____, 2012, by and between the CITY OF POUGHKEEPSIE, (hereinafter referred to as the Municipality) by the Mayor acting in accordance with the authority of the duly empowered local governing body, (hereinafter referred to as the Common Council) and TIME WARNER NY CABLE LLC, a New York General Partnership, organized and existing under the laws of the State of New York, the local place of business of which is currently located at 2778 State Route 52, Liberty, NY 12754, hereinafter referred to as "Time Warner Cable."

**WITNESSETH**

**WHEREAS,** Pursuant to the City Law the Common Council has the exclusive power on behalf of the Municipality to grant franchises providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the Municipality to any franchisee for or relating to the occupation of the Streets; and

**WHEREAS,** Pursuant to the Communications Act of 1934, as amended, (the "Communications Act") the Common Council has the authority to grant cable television franchises and renewals thereof on behalf of the Municipality and whereas the Common Council and Time Warner Cable pursuant to said Federal Law and pursuant to applicable State laws and the regulations promulgated thereunder, have complied with the franchise procedures required of Municipalities and cable operators in the grant of cable television franchises or their renewal; and

**WHEREAS,** The Municipality has conducted negotiations with Time Warner Cable and has conducted one or more public hearings on Time Warner Cable's franchise renewal proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of Time Warner Cable's technical ability, financial condition and character; said public hearing also included consideration and approval of Time Warner Cable's plans for constructing and operating the cable television system; and

**WHEREAS,** Following such public hearings and such further opportunity for review, negotiations and other actions as the Common Council deemed necessary and that is required by law, the Common Council decided to renew Time Warner Cable's franchise as provided hereinafter; and

**WHEREAS,** The Common Council, in granting this franchise renewal, embodied in the agreement the results of its review and any negotiations with Time Warner Cable and has determined that said franchise agreement and Time Warner Cable respectively, fulfills and will fulfill the needs of the

Municipality with respect to cable television service and complies with the standards and requirements of the New York State Public Service Commission ("NYSPSC");

**NOW, THEREFORE,** In consideration of the foregoing clauses, which clauses are hereby made a part of this franchise agreement, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

**SECTION 1 - DEFINED TERMS**

Unless the context clearly indicates that a different meaning is intended:

(a) "Basic Service" means any service tier which includes the retransmission of local broadcast signals.

(b) "Common Council" means the Board of Trustees of the Municipality.

(c) "Cable Television Service" means

(1) The one way transmission to Subscribers of Video Programming, or other programming service, and

(2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, or other programming service.

(d) "Cable Television System" means a facility, consisting of a set of closed transmission paths, including (without limitation) fiber optic wires or lines, and associated signal generation, reception and control equipment that provides Cable Television Service to multiple subscribers within a community.

(e) "Time Warner Cable" means Time Warner NY Cable LLC.

(f) "Effective Date" of this agreement shall be that date subsequent to confirmation of the Franchise, by the New York State Public Service Commission ("NYSPSC") agreed to by the parties, which date is (calendar date).

(g) "Franchise" means the grant or authority given hereunder to Time Warner Cable to construct and operate a Cable Television System in the Municipality in accordance with the terms hereof.

(h) "FCC" means the Federal Communications Commission, its designees and any successor thereto.

(i) "Gross Revenues" means all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Time Warner Cable from the operation of the Cable System to provide Cable Service in the Service Area.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for:

(i) Basic Service;

(ii) all fees charged to any Subscribers for any and all Cable Service provided by Time Warner Cable over the Cable System in the Service Area, including without limitation Cable Service related on-screen program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees to the extent revenue; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee;

(iii) revenues from the sale or lease of access channel(s) or channel capacity;

(iv) video on demand and pay-per-view;

(v) compensation received by Time Warner Cable that is derived from the operation of Time Warner Cable's Cable System to provide Cable Service with respect to commissions that are paid to Time Warner Cable as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Time Warner Cable pursuant to compensation arrangements for advertising derived from the operation of Time Warner Cable's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue; and

(vi) Franchise Fees imposed on Time Warner Cable by the LFA that are passed through from Time Warner Cable as a line item paid by Subscribers.

Except as provided above, Gross Revenue shall not include:

(i) Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Time Warner Cable to provide Cable Service over the Cable System;

(ii) bad debts written off by Time Warner Cable in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected);

(iii) refunds, rebates or discounts made to Subscribers or other third parties;

(iv) any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication that are not Cable Services; and any other revenues attributed by Time

Warner Cable to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders;

(v) any revenue of Time Warner Cable or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue;

(vi) the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

(vii) any tax of general applicability imposed upon Time Warner Cable or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Time Warner Cable and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

(viii) any foregone revenue which Time Warner Cable chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Time Warner Cable and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Time Warner Cable chooses not to receive in exchange for trades, barters, services or other items of value shall be included in Gross Revenue);

(ix) sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Time Warner Cable of marketing costs incurred by Time Warner Cable for the introduction of new programming;

(x) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or

(xi) any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

Should revenue from any service provided by Time Warner Cable over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Time Warner Cable, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Time Warner Cable's provision of such service as Gross Revenue, and Time Warner Cable shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

(j) "May" is permissive.

(k) "Municipality" means the City of Poughkeepsie. Wherever the context shall permit, Board, Council and Municipality shall be used interchangeably and shall have the same meaning under this Franchise.

(l) "NYSPSC" means New York State Public Service Commission.

(m) "Person" means an individual, partnership, association, corporation, joint stock company trust, corporation, or organization of any kind.

(n) "Service Tier" means a category of multi-channel Cable Television Service provided by Time Warner Cable over the Cable Television System for which a separate rate is charged for such category by Time Warner Cable.

(o) "Shall" or "will" are mandatory.

(p) "Streets" means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks and public grounds and waters within or belonging to the Municipality.

(q) "Subscriber" means any person lawfully receiving any Cable Television Service in the Municipality provided over the Cable Television System.

(r) "Video Programming" means any and all programming services provided by, or generally considered comparable to programming provided by a television broadcast station.

**SECTION 2 - CONSENT TO FRANCHISE AND CONDITION PRECEDENT**

(a) The Municipality hereby grants to Time Warner Cable the non-exclusive right to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service within the Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across any and all said Streets such facilities (e.g., poles, wires, cables, conductors, ducts, conduits, vaults, pedestals, manholes, amplifiers, appliances, attachments and other property) as is deemed necessary or useful by Time Warner Cable, for the operation of its cable system. Additionally, the Municipality, insofar as it may have the authority to so grant, hereby authorizes Time Warner Cable to use any and all easements dedicated to compatible uses, such as electric, gas, telephone or other utility transmissions, for the purposes of erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across such easements such facilities of the Cable Television System as is deemed necessary or useful by Time Warner Cable, for the operation of its cable system. Upon request by Time Warner Cable and at Time Warner Cable's sole expense, the Municipality hereby agrees to assist Time Warner Cable in gaining access to and using such easements.

(b) Nothing in this Franchise shall limit the right of Time Warner Cable to transmit any kind of signal, frequency, or provide any type of service now in existence or which may come into existence and which is capable of being lawfully transmitted and distributed by those facilities owned and operated by Time Warner Cable. The provision by Time Warner Cable of any service other than cable service shall be subject to all applicable laws and regulations and to any right the Municipality may have to require fair and reasonable compensation for Time Warner Cable's use of the rights-of-way to provide such service, provided that such requirement is non-discriminatory and competitively neutral.

(c) Without waiver or restriction of the rights available to the parties hereto under applicable law, this Franchise and the attachments hereto constitute the entire agreement between the parties and supersede any and all prior cable television agreements and other agreements or instruments by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to Cable Television Service.

(d) In the event the Municipality grants to any other Person (being referred to as "Grantee" in the below quoted paragraph) a franchise, consent or other right to occupy or use the Streets, or any part thereof, for the construction, operation or maintenance of all or part of a cable television system or any similar system or technology, the Municipality shall insert the following language into any such franchise, consent or other document and/or promptly pass a resolution, conditioning the use of the Streets or any part thereof by any such Person, as follows:

> "Grantee agrees that it will not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of Time Warner Cable without the prior written consent of Time Warner Cable. Grantee shall indemnify Time Warner Cable against any damages or expenses incurred by Time Warner Cable as a result of any removal, damage, penetration, replacement or interruption of the services of Time Warner Cable caused by the Grantee." As used immediately above in the above quoted paragraph, the term "Time Warner Cable" shall mean Time Warner Cable Inc., as defined in this Franchise, and its successors, assigns and transferees.

(e) This Franchise is non-exclusive. Any grant of a subsequent franchise shall be on terms and conditions which are not more favorable or less burdensome than those imposed on Time Warner Cable hereunder.

As used in this Section, the phrase, "occupancy or use of Streets," or any similar phrase, shall not be limited to the physical occupancy or use thereof but shall include any use above or below the Streets.

**SECTION 3 - APPROVAL OF COMPANY BY MUNICIPALITY**

(a) This Franchise is subject to and complies with all applicable Federal and State laws and regulations, including, without limitation, the rules of the NYSPSC concerning franchise standards. The Municipality hereby acknowledges and agrees that this Franchise has been entered into by it in accordance with and pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Sec. 521 et seq. (hereinafter referred to as the "Communications Act"). The Municipality hereby represents and warrants that this Franchise has been duly entered into in accordance with all applicable local laws. The Municipality hereby acknowledges that it, by duly authorized members thereof, has met with Time Warner Cable for the purposes of evaluating Time Warner Cable and negotiating and consummating this Franchise.

(b) In a full and public proceeding, affording due process, the Municipality has considered and approved Time Warner Cable's technical ability and character and has considered and found adequate Time Warner Cable's plans for constructing and operating the cable system.

**SECTION 4 - FRANCHISE TERM**

The term of this Franchise shall be ten (10) years, effective the date the New York State Department of Public Service approves the franchise agreement.

**SECTION 5 - ASSIGNMENT OR TRANSFER OF FRANCHISE**

(a) Time Warner Cable shall not transfer this Franchise to any person, firm, company, corporation or any other entity without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or denied.

(b) In the event that the Municipality refuses to grant such consent, it shall set forth specific reasons for its decision in writing by municipal resolution.

(c) Notwithstanding the above, this Section 5 shall not be applicable and no prior approval shall be required if Time Warner Cable shall transfer this Franchise to any of its principal partners, to any parent, subsidiary or affiliate of any of the principal partners of Time Warner Cable, or to any other firms or entities controlling, controlled, by or under the same common control as Time Warner Cable.

**SECTION 6 - REVOCATION**

(a) The Municipality may revoke this Franchise and all rights afforded Time Warner Cable hereunder in any of the following events or for any of the following reasons:

(I) Time Warner Cable fails after sixty (60) days written notice from the Municipality to substantially comply or to take reasonable steps to comply with a material provision of this Franchise. Notwithstanding the above, should Time Warner Cable comply or take said reasonable steps to comply within said sixty days notice, the Municipality's right to revoke this Franchise shall immediately be extinguished; or

(ii) Time Warner Cable is adjudged a bankrupt; or

(iii) Time Warner Cable knowingly and willfully attempts or does practice a material fraud or deceit in its securing of this Franchise.

(b) Notwithstanding the above, no revocation shall be effective unless and until the Municipality shall have adopted an ordinance setting forth the cause and reason for the revocation and the effective date thereof, which ordinance shall not be adopted until the expiration of one hundred twenty (120) days from the date of delivery of written notice to Time Warner Cable specifying the reasons for revocation and an opportunity for Time Warner Cable to be fully and fairly heard on the proposed adoption of such proposed ordinance. If the revocation as proposed therein depends on a finding of fact, such finding of fact shall be made by the Municipality only after an administrative hearing providing Time Warner Cable with a full and fair opportunity to be heard, including, without limitation, the right to introduce evidence, the right to the production of evidence and the right to question witnesses. A transcript shall be made of such hearing. Time Warner Cable shall have the right to appeal any such administrative decision to a state or federal district court as Time Warner Cable may choose and the revocation shall not become effective until any such appeal has become final or the time for taking such appeal shall have expired.

**SECTION 7 - INDEMNIFICATION & INSURANCE**

(a) Time Warner Cable shall indemnify and hold harmless the Municipality from all liability, damage and reasonable cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of Time Warner Cable its employees or agents undertaken pursuant to this Franchise. The Municipality shall promptly notify Time Warner Cable of any claim for which it seeks indemnification; afford Time Warner Cable the opportunity to fully control the defense of such claim and any compromise, settlement, resolution or other disposition of such claim, including by making available to Time Warner Cable all relevant information under its control.

(b) Time Warner Cable shall as of the Effective Date of this Franchise obtain liability insurance in the minimum amount set forth within and shall furnish to the Municipality evidence of such liability insurance policy or policies, in the form of a certificate of insurance naming the Municipality as an additional named insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Franchise; said policy and replacements shall be in the combined amount of Ten Million Dollars ($10,000,000.00) for bodily injury and property damage and excess liability of umbrella coverage in the amount of $10 million issued by a company authorized to do business in New York State. In addition, Time Warner Cable shall carry Worker's Compensation insurance for its employees in such amounts as is required by the laws of the State of New York. The insurance coverage herein referred to above may be included in one or more policies covering other risks of Time Warner Cable or any of its affiliates, subsidiaries or assigns.

**SECTION 8 - USE OF EXISTING POLES AND LOCATION OF UNDERGROUND FACILITIES**

(a) Time Warner Cable hereby agrees that when and wherever it deems it economical and reasonably feasible, it shall enter into agreements with telephone or electric or other utilities (collectively "utilities") for the use of said utilities' poles or conduit space whereby said utilities shall provide use of and access to said poles or conduit space by Time Warner Cable for Time Warner Cable's lines and other equipment. Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole(s) or conduit space of utilities is not economically reasonable or otherwise feasible, Time Warner Cable may erect or authorize or permit others to erect any poles or conduit space or any other facilities within the Streets of the Municipality pursuant to the issuance by the Municipality of any necessary authorizations which shall not be unreasonably withheld or delayed.

(b) Subject to the provisions of sub-paragraph (c) below, in such areas of the Municipality where it or any sub-division thereof shall hereafter duly require that all utility lines be installed underground, Time Warner Cable shall install its lines underground in accordance with such requirement.

(c) Notwithstanding the foregoing, if Time Warner Cable shall in any instance be unable to install or locate its wires underground, then the Municipality, on being apprised of the facts thereof, shall permit such wires to be installed above the ground even though other facilities in the area may be placed, or required to be placed, underground. However, any such permission shall be on such conditions as the Municipality may reasonably require.

**SECTION 9 - RELOCATION OF PROPERTY**

(a) Whenever the Municipality shall require the relocation or reinstallation of any property of Time Warner Cable in or on any of the Streets of the Municipality as a result of the relocation or other improvements by the Municipality of any such Streets, it shall be the obligation of Time Warner Cable on written notice of such requirement to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the Municipality. In the event any other person, including a public utility, is compensated for similar relocation or reinstallation then in such case Time Warner Cable shall be similarly compensated.

(b) Time Warner Cable shall, on request of a person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses of any such temporary removal, raising or lowering of wires or other property shall be paid in advance to Time Warner Cable by the person requesting the same. Time Warner Cable shall be given in such cases not less than five (5) working days prior written notice in order to arrange for the changes required.

**SECTION 10 - USE & INSTALLATION**

(a) Time Warner Cable or any person authorized by Time Warner Cable to erect, construct or maintain any of the property of Time Warner Cable used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of Time Warner Cable in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to members of the public. All Cable Television System equipment shall conform to those standards of the National Electrical Code and the National Board of Fire Underwriters which exist at the time said equipment is installed and replaced.

(b) Time Warner Cable agrees to install all Cable Television System equipment in a manner to reasonably minimize interference to be expected with the usual use of the Streets and in no event shall any such Cable Television System equipment be located so as to substantially and regularly interfere with the usual public travel on any Street of the Municipality. Time Warner Cable shall construct and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe, thorough and reliable manner. Time Warner Cable shall promptly repair or replace any municipal property damaged or destroyed by Time Warner Cable so as to restore it to serviceable condition.

(c) Whenever Time Warner Cable or any person on its behalf shall cause any injury or damage to public property or Street, by or because of the installation, maintenance or operation of the Cable Television System equipment, such injury or damage shall be remedied as soon as reasonably possible after the earlier of notice to Time Warner Cable from the Municipality or after Time Warner Cable becomes aware of the same, in such fashion so as to restore the property or Street to serviceable condition. Time Warner Cable is hereby granted the authority to trim trees upon and overhanging the Streets of, and abutting private property, (i.e., in the public way) in the Municipality to the extent it reasonably deems necessary so as to prevent the branches or growths from coming in contact with the wires, cable and other equipment of Time Warner Cable's Cable Television System.

**SECTION 11 - CONTINUOUS SERVICE**

Time Warner Cable shall continue to provide cable service to all subscribers who meet their obligations to Time Warner Cable with respect to such service. Time Warner Cable shall not, without the written consent of the Municipality abandon its cable television system or any portion thereof in such a way as would limit its ability to continue to provide cable service to all subscribers without the written consent of the Municipality.

**SECTION 12 - FRANCHISE AREA AND LINE EXTENSION**

Time Warner Cable shall comply with the requirements for construction of cable television plant and provision of cable television services as set forth in Section 895.5 of the Rules of the NYSPSC. In addition, the Time Warner Cable shall extend service to all dwelling units within the corporate limits of the City in which the density of dwelling units is at least twenty (20) dwelling units per cable mile in accordance with 895.5 of the NYSDPS rules.

**SECTION 13 - OPERATION AND MAINTENANCE**

(a) Time Warner Cable shall contract and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe, thorough and reliable manner.

(b) Time Warner Cable shall maintain and operate its cable television system at all times in compliance with the duly promulgated and lawful provisions of Section 896 of the Rules and Regulations of the NYSPSC and the technical requirements set forth by the FCC. Time Warner Cable shall maintain staffing levels and support equipment to assure that telephone inquiries are handled consistent with FCC standards. Time Warner Cable shall respond to individual requests for repair service no later than the next business day. System outages, and problems associated with channel scrambling and switching equipment, shall be acted upon promptly after notification. Time Warner Cable shall maintain a means to receive repair service requests and notice of system outages at times when its business office is closed.

(c) Throughout the term of this Franchise, Time Warner Cable's Cable Television System shall have a minimum channel capacity of seventy-eight (78) channels.

**SECTION 14 - RATES**

Time Warner Cable shall not illegally discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers.

**SECTION 15 - SERVICE TO PUBLIC FACILITIES, ACCOUNTABILITY PROVISIONS AND INSPECTION OF RECORDS**

(a) At the request of the Municipality, Time Warner Cable shall provide and maintain a single service outlet and basic service to any school, police station, firehouse and municipally owned building which is occupied for governmental purposes, provided the connection point is no further than two hundred feet (200') from the closest feeder line of the Cable Television System. All such connections shall be above ground except where all utility lines and cables in the area are underground. The Municipality shall not extend such service to additional outlets, without the express written consent of Time Warner Cable.

(b) Municipality, upon reasonable notice and during normal business hours, shall have the right to inspect all books, records, maps, plans, financial statements and other like materials of Time Warner Cable which are pertinent to Time Warner Cable's compliance with the terms and conditions of this Franchise.

(c) Municipality and Time Warner Cable agree that Time Warner Cable's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding subscribers.

(d) Municipality will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided Time Warner Cable has advised Municipality of the confidential nature of the information. In the event that the Municipality receives request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Municipality will give Time Warner Cable notice of such request as soon as possible prior to disclosure in order to allow Time Warner Cable to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

**SECTION 16 - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS**

Time Warner Cable shall comply with the standards for public, educational and governmental (PEG) access channels as set forth in Section 895.4 of the Rules of the NYSPSC.

The PEG channels provided hereunder shall be shared with the other municipalities and their residents which are served by the system.

Within two months from the effective date, Time Warner Cable shall pay the Municipality $20,000 to finance the purchase of capital equipment to be used for the production of programming for exhibition on the PEG access channels. A second payment of $20,000 to be used for the same purpose shall be paid within sixty days of the first anniversary of the effective date of the franchise agreement~~;~~, for a total of $40,000. Upon request, the Municipality shall provide to Time Warner Cable records identifying the equpment purchased with these funds.

**SECTION 17 - ADDITIONAL SUBSCRIBER SERVICES**

(a) Payment for equipment provided by Time Warner Cable to subscribers and the installation, repairs, and removal thereof shall be paid in accordance with Time Warner Cable's standard and customary practices and applicable rules and regulations of the FCC.

(b) Notice of Time Warner Cable's procedures for reporting and resolving billing disputes and Time Warner Cable's policy and the subscribers rights in regard to "personally identifiable information," as that term is defined in Section 631 of the Communications Act, will be given

to each subscriber at the time of such person's initial subscription to the Cable Television System services and thereafter to all subscribers as required by Federal or State law.

(c) In accordance with the applicable requirements of Federal and State laws, Time Warner Cable shall provide written notice of any increases in rates or charges for any Cable Television Service.

(d) The Administrator, as the case may be, for the Municipality for this Franchise shall be Supervisor or Mayor of the Municipality. The Administrator is responsible for the continuing administration of the Franchise on behalf of the Municipality. All correspondence and communications between Time Warner Cable and the Municipality pursuant to this Franchise shall be addressed by Time Warner Cable to the Administrator.

(e) It is agreed that all Cable Television Service offered to any subscribers under this Franchise shall be conditioned upon Time Warner Cable having legal access to any such subscriber's dwelling units or other units wherein such service is provided.

(f) Time Warner Cable shall comply with the Customer Service Consumer Protection Standards set forth in Sections 890 and 896 of the Rules and Regulations of the NYSPSC.

(g) Time Warner Cable shall provide notice to each subscriber of its procedures for reporting and resolving subscriber complaints as required by applicable regulations.

**SECTION 18 - FRANCHISE FEES**

(a) Time Warner Cable shall pay the Municipality an amount equal to 5% of Time Warner Cable's Gross Revenues received by Time Warner Cable directly from subscribers for cable services purchased by subscribers.

(b) There shall be applied as a credit against the Franchise Fee the aggregate of: (i) any taxes, fees or assessments of general applicability imposed on Time Warner Cable or any subscribers, or both, which are discriminatory against Time Warner Cable or any subscribers, (ii) any non-capital expenses incurred by Time Warner Cable in support of the PEG access requirements of this Franchise and (iii) any fees or assessments payable to the NYSPSC which when combined with all other fees and credits would exceed 5% of gross revenues. Time Warner Cable shall have the right to apply franchise fees derived from the operation of the system to provide cable service paid as a credit against special franchise assessments pursuant to Section 626 of the New York State Real Property Tax Law.

(c) Payment of the franchise fee shall be due annually within one hundred twenty (120) days of the end of the company's fiscal year. Time Warner Cable shall submit to the Municipality, along with the payment of said fees, a report showing reasonable detail the basis for the computation thereof.

**SECTION 19 - SEVERABILITY, GOVERNING LAW, POLICE POWERS**

**REQUESTS FOR AUTHORIZATION AND NON-DISCRIMINATION**

(a) Should any provision of this Franchise be held invalid by a court or regulatory agency of competent jurisdiction, the remaining provisions of this franchise shall remain in full force and effect.

(b) To the extent not inconsistent with or contrary to applicable federal law, the terms of this Franchise shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Franchise or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable Federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable Federal laws.

(c) In addition to the provisions contained in this Franchise and in existing applicable ordinances, the Municipality may adopt such additional regulations as it shall find necessary in the exercise of its police power, provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this Franchise.

(d) Time Warner Cable shall file requests for any necessary operating authorization with the NYSPSC and the FCC within sixty (60) days from the date the Franchise is awarded by the Municipality.

(e) Time Warner Cable will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

**SECTION 20 - NOTICE**

All notices required herein shall be in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail, or overnight, or hand delivered to the parties and locations as specified below. Both Time Warner Cable and Municipality may change where notice is to be given by giving notice to the other.

When notices sent to
Time Warner Cable:

Time Warner Cable
Hudson Valley Region
Director of Government Affairs
2778 State Route 52
Liberty, NY 12754
Telephone: (845) 695-9625
Facsimile: (845) 692-0901

When notices sent to

Municipality: City of Poughkeepsie
Mayor
City Hall
P.O. Box 300
62 Civic Center Plaza
Poughkeepsie, NY 12601

**SECTION 21 - FORCE MAJEURE**

In no event, and notwithstanding any contrary provision in this Franchise, shall this Franchise be subject to revocation or termination, or Time Warner Cable be subject to penalty or prejudice or in any way liable for non-compliance with or delay in the performance of any obligations hereunder, where its failure to cure or take reasonable steps to cure is due to reason of strike, Acts of God, acts of public enemies, order of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of Time Warner Cable. Time Warner Cable shall not be deemed to be in violation or default during the continuance of such inability and Time Warner Cable shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of Time Warner Cable's obligations hereunder shall automatically extend for a period of time equal to the period of the existence of any such events or conditions and such reasonable thereafter as shall have been necessitated by any such events or conditions.

**SECTION 22 - RIGHTS OF ENFORCEMENT**

Nothing contained in this Franchise is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Franchise.

**SECTION 23 - FURTHER ASSURANCES**

The Municipality shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as Time Warner Cable may reasonably request in order to effect and confirm this Franchise and the rights and obligations contemplated herein.

**SECTION 24 - INTEGRATION**

This Franchise supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Franchise may be amended (except as otherwise expressly provided for herein) only by agreement in writing signed by duly authorized persons on behalf of both parties. To the extent required by State law, amendments hereto shall be confirmed or approved by the NYSPSC.

This Franchise may be executed in one or more counterparts, all of which taken together shall be deemed one (1) original.

The headings of the various Sections of this Franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Franchise.

The rights and remedies of the parties pursuant to this Franchise are cumulative and shall be in addition to and not in derogation of any rights or remedies which the parties may have with respect to the subject matter of this Franchise.

**SECTION 25 - NO JOINT VENTURE**

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or to the public in any manner which would indicate any such relationship with the other.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement this _____ day of _____, 2012.

| **TIME WARNER NY CABLE LLC.** | **MUNICIPALITY: CITY OF POUGHKEEPSIE** |
|---|---|
| By: _____ Officer Name | By: _____ Name |
| Title: _____ | Title: _____ |

**Constantine Kazolias 47 Noxon Street-**

**Ken Stickle 118 Catherine Street-**

Dated:

I hereby certify that this a true and correct copy of the Minutes of the Public Hearing held on Monday, October 1, 2012 at 6:15 p.m.

Respectfully submitted,

City Chamberlain