

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO A LICENSE AGREEMENT WITH TIME WARNER CABLE.

WHEREAS, Time Warner Cable proposes to install a fiber optic communication cable and conduit therefor upon the City of Hudson's Parking Terrace to assist in serving a private property at 89 First Street in Hudson; and

WHEREAS, it is necessary for a license agreement to be entered into between the City and Time Warner Cable for this purpose;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hudson, Summit County, State of Ohio, that:

Section 1: The City Manager is authorized and directed to enter into a license agreement with Time Warner Cable in a form essentially in accordance with the "License Agreement" attached hereto and incorporated herein as Exhibit A.

Section 2: Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 3: This Resolution shall take effect and be in force from after the earliest period allowed by law.

PASSED: _____

David A. Basil, Mayor

ATTEST:

Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on _____, 2016.

Elizabeth Slagle, Clerk of Council

EXHIBIT A

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this ____ day of _____, 2015, by and between the **CITY OF HUDSON, OHIO** ("Licensor"), a municipal corporation, and **TIME WARNER CABLE** ("Licensee"), an Ohio for profit corporation.

WITNESSETH:

WHEREAS, Licensee proposes to install communication cables on certain of Licensor's facilities identified on Exhibit A attached hereto and made a part hereof (the "Facilities") and within the areas identified as the "Licensed Area" on Exhibit A (the "Licensed Area"); and

WHEREAS, Licensee will need to place and maintain cables and other aerial equipment within the Licensed Area and desires to place such cables and other aerial equipment on the Facilities; and

WHEREAS, Licensor is willing to permit the placement of said cables and other aerial equipment on its Facilities and within the Licensed Area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

SECTION 1 GRANT OF LICENSE

(a) **Grant of License.** Upon the terms and conditions hereinafter set forth, Licensor hereby grants to Licensee a revocable, nonexclusive license (the "License") for Licensee to attach Licensee's communications cables and other aerial equipment that are specified in Exhibit A (the "Equipment") to the Facilities located in the Licensed Area. The License includes the right of reasonable access to the Licensed Area in order to maintain, repair and replace the Equipment as required or permitted by the terms of this Agreement.

(b) **No Property Interest.** No use, however extended, of the Licensed Area, nor payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in the Facilities or the Licensed Area, but Licensee's rights therein shall be and remain a mere license.

{11974081 - 1}

(c) **Licenser Not Obligated.** Nothing herein contained shall be construed to compel Licenser to construct, retain, extend, place or maintain the Licensed Areas or any related facilities.

(d) **No Restriction on Licenser.** It is recognized by the Licensee that the Licenser has heretofore entered into, or may in the future enter into, agreements and arrangements with others not parties to this Agreement regarding the Licensed Area. Nothing herein contained shall be construed as a limitation, restriction or prohibition against Licenser with respect to such other agreements and arrangements. The rights of the Licensee shall at all times be subject to any present or future joint-use arrangement between Licenser and any other entity, including, but not limited to, a public utility or government agency.

SECTION 2 ATTACHMENT FEE

No Annual Fee. There shall be no annual attachment fee (the "Attachment Fee") charged under the terms of this Agreement. Licenser shall have the option to impose an Attachment Fee every year after commencement of this Agreement in accordance with the rules and regulations of the Federal Communications Commission and increase it thereafter in a corresponding percentage of the increase in the Handy-Whitman Index of Public Utility Construction Costs, Electrical, North Central Division, Table No. E-3, line item for poles, using the year of commencement of the Attachment Fee as the base line. In no case, shall the Attachment Fee be reduced once imposed and increased pursuant to this provision.

SECTION 3 MAINTENANCE AND MANNER OF WORK

(a) **Plans and Specifications.** Prior to commencing attachment of any Equipment to any of the Facilities, Licensee shall submit to the Director of Public Works of the City, or his/her designee for his approval detailed plans and specifications for such attachment. Licensee shall not make any attachments unless and until Licensee has obtained from the City of Hudson Public Works Department, or their designee, written approval of the plans and specifications therefor.

(b) **Maintenance and Removal of Equipment.** Licensee shall at all times cause the Equipment to be maintained in good condition and repair. If it is necessary for maintenance and/or any other municipal purpose for the Licensee's Equipment to be removed from the Facilities, Licensee shall remove said Equipment upon ten (10) days' notice by Licenser. Licenser shall not be responsible for costs incurred by Licensee for such Equipment removal and replacement.

(c) **Manner of Work.** All work, whether in the nature of erection, construction, installation, alteration, maintenance or repair, permitted or required to be made by Licensee shall be performed and completed at no cost or expense to Licenser in a first class and workmanlike manner, promptly, efficiently and competently by duly qualified and, if necessary, licensed persons or entities, and in accordance with all applicable laws, ordinances, rules, rulings, regulations and requirements of any governmental authority having jurisdiction over the work. Prior to commencing any of such work, Licensee, at Licensee's sole cost and expense, shall notify the City of Hudson Public Works Department in writing, obtain all permits and authorizations required pursuant to any legal requirements. Licensee shall perform and complete any work permitted or

{01974381 - 2}

SECTION 4
DAMAGE, INDEMNITY, INSURANCE AND WAIVER

(a) **Repair of Damage.** If the Facilities, the Licensed Area or any other property of Licensor or any other entity with property on the Facilities is damaged by Licensee or Licensee's employees, representatives, agents, officials, contractors, licensees or invitees, arising out of or as a result of the License or rights granted to Licensee by this Agreement, or as a result of the existence of the Equipment or its attachment to the Facilities, Licensee shall immediately notify the City and promptly repair such damage in a manner satisfactory to the City and restore such property of Licensor to its previous condition at Licensee's sole cost and expense.

(b) **Indemnity.** Licensee agrees to indemnify, defend, and save Licensor and its employees and officials harmless from and against any and all claims, actions, demands, damages, liabilities, costs and expenses, including attorneys' and other professional fees, in connection with loss of life, personal or bodily injury and/or damage or injury to property occurring on or about the Licensed Area or arising from or related to, wholly or in part, directly or indirectly, the existence of the Equipment or the exercise of the License or of any right granted to Licensee by this Agreement or the performance of any obligation imposed upon Licensee by this Agreement. The obligations of Licensee pursuant to this subsection shall survive the termination of this Agreement as to any incidents occurring prior to the effective date of such termination.

(c) **Insurance.** At all times after the execution of this Agreement, Licensee, at Licensee's own cost and expense, will obtain and keep in force, in a good and solvent insurance company or companies licensed to do business in the State of Ohio, commercial general liability insurance, on an occurrence basis, insuring against any and all claims for injuries to persons or loss or damage to property, including insurance against assumed or contractual liability, in a combined single limit of not less than the Minimum Coverage (as hereinafter defined). Each policy evidencing such insurance shall designate Licensor as an additional insured and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to Licensor. A copy of each such policy, along with a certificate thereof, shall be deposited with Licensor by Licensee promptly upon commencement of Licensee's obligation to procure the same. Prior to the expiration or termination of any such policy, Licensee shall deliver to the City a copy of a new or renewal policy, along with a certificate thereof. Initially, the "Minimum Coverage" shall be Three Million Dollars (\$3,000,000.00). The Minimum Coverage shall be adjusted every three (3) years on the anniversary of the date of this Agreement by multiplying the Minimum Coverage applicable to the preceding year by the greater of one (1) or a fraction, the numerator of which is the Consumer Price Index for the third (3rd) month preceding

{0195442 - 1}

the month during which such adjustment is required to be made and the denominator of which is the Consumer Price Index for the third (3rd) month preceding the month in which the Effective Date occurred. As used herein, the "Consumer Price Index" means the Consumer Price Index - All Urban Consumers All Items, U.S. City Average (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics shall change the base period, then to make the computation required by this section, the Index shall be converted to the new base period by substituting new index numbers for old index numbers, if appropriate, or by applying the formula supplied by the Bureau for converting to the new base period. If such Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor is discontinued, then the City shall select another index published by a department or agency of the United States Government to be substituted for the predecessor index with appropriate adjustments required because of the predecessor index. If no such index is so published, then Licensor shall substitute an index prepared by an appropriate agency, corporation or other entity. Licensee shall maintain Worker's Compensation Insurance in accordance with applicable law.

(d) **Waiver of Liability.** Neither Licensor nor Licensor's elected and non-elected officers, officials, representatives, agents, employees or contractors shall be responsible or liable to Licensee or Licensee's representatives, officers, agents, employees or contractors or to anyone claiming by, through or under Licensee, and Licensee hereby waives all claims for damage to person or property, and any and all other losses or damages which may be sustained by Licensee or any person claiming by, through or under Licensee resulting, wholly or in part, directly or indirectly, as a result of the License.

SECTION 5 TERM

The term of this Agreement shall commence on the date written above, subject to approval of this Agreement by Resolution of the City of Hudson Council, and shall be for a one year term which shall be automatically renewable for successive one year terms, unless prior to the expiration of any one year term, a ninety (90) day notice of termination is provided, as hereinafter set forth. Either party hereto shall have the right to terminate this Agreement upon not less than a ninety (90) days' prior written notice to the other party hereto. In the event of such termination, Licensee shall, at Licensee's sole cost and expense and without any compensation from Licensor, prior to the effective date of termination, remove the Equipment installed pursuant to the License from the Facilities and the Licensed Area and repair all damage to the Facilities, the Licensed Area and any other property of Licensor caused by the installation or removal of the Equipment. If Licensee fails to do so prior to the termination of this Agreement, then Licensor shall have the right to remove such Equipment, without liability to Licensee or anyone claiming by or through Licensee, and all costs and expenses of Licensor in performing such work shall be payable by Licensee to Licensor upon demand. The obligations of Licensee pursuant to this section shall survive the termination of this Agreement.

SECTION 6 DEFAULT

If Licensee fails to timely make any payment or perform any other obligation imposed upon Licensee by this Agreement, then Licensor shall have the right to:

- (i) terminate this Agreement immediately upon written notice to Licensee; and/or

{6097438} - 5}

- (ii) perform, on behalf and at the sole cost and expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which Licenser shall have given Licensee notice; the cost of which performance by Licenser shall be payable by Licensee to Licenser upon demand.

Licensee shall not have the right to a refund of any portion of the Attachment Fee if this Agreement is terminated pursuant to this provision.

SECTION 7 MISCELLANEOUS

(a) **No Assignment.** Licensee shall not have the right or power to assign the License or any of Licensee's rights under this Agreement. Any such assignment shall be void.

(b) **Notices.** Any notice required or intended to be given to any party under the terms of this Agreement shall be in writing and shall be deemed duly given when delivered personally or when deposited in the United States mail, certified or registered, return receipt requested, with postage prepaid, or when delivered prepaid to a reputable overnight courier which provides written evidence of receipt, addressed to the pertinent party at the following addresses or at such other addresses as the parties may hereafter designate by notice given pursuant to this subsection:

If to Licenser: Jane Howington
City Manager
City of Hudson, Ohio
115 Executive Parkway, Suite 400
Hudson, Ohio 44236

With copies to: R. Todd Hunt
Solicitor
City of Hudson
c/o Walter | Haverfield LLP
1301 East 9th Street, Suite 3500
Cleveland, Ohio 44114

If to Licensee: Time Warner Cable
Attention:

(c) **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, successors and assigns.

(d) **Modification of Agreement.** Any waiver, alteration or modification of any part or provision of this Agreement, or the cancellation or replacement of this Agreement, shall not be valid unless in writing and executed by the parties hereto.

{09954381 - 1}

(e) **Applicable Law and Venue.** The laws of the State of Ohio shall govern the validity, performance and enforcement of this Agreement. Venue of all actions shall be in Summit County, Ohio.

(f) **Headings.** All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

(g) **Severability.** If any provision, term or clause of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, shall be severable, the remainder continuing in full force and effect, but only to the extent that the remainder does not become unreasonable or otherwise contrary to the purpose and intent of this Agreement.

(h) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

(i) **Construction of Agreement.** This Agreement has been fully reviewed and approved by the parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provisions being interpreted.

(j) **Waiver.** Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions or conditions of this Agreement, or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, condition or right of election, but same shall remain in full force and effect.

(k) **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings and Agreements between the parties relating to the subject matter of this Agreement.

The parties have caused this Agreement to be executed as of the day and year first above written.

TIME WARNER CABLE


By: Dennis Thomson
Print Name: Dennis Thomson
Its: Project Coordinator
Date: 12-23-2015

CITY OF HUDSON, OHIO,
a municipal corporation

By: _____
Jane Howington, City Manager
Date: _____

Authorized by City Council Resolution No. _____
passed _____.

Approved as to form:



R. Todd Hunt, City Solicitor

STATE OF OHIO }
COUNTY OF Summit } SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared TIME WARNER CABLE, by Dennis Thompson, its Project Coordinator who acknowledged that he/she did sign the foregoing agreement and that the same was his/her free act and deed and the free act in the capacity indicated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 23 day of December, 2015.



Kelly Yakopovitch
NOTARY PUBLIC

STATE OF OHIO }
COUNTY OF SUMMIT } SS:

BEFORE ME, a notary public in and for said county and state, personally appeared the City of Hudson, Ohio, by Jane Howington, its City Manager, who acknowledged that she did sign the foregoing agreement and that the same was her free act and deed as a City official and the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2015.

NOTARY PUBLIC

Exhibit A - 1

November 19, 2015

Hudson Engineering-Thomas Sheridan

Hudson Ohio

Dear Mr. Sheridan: Time Warner would like to provide service to Dr John White at 89 1st St.

Our contractor-Taylor Communication-will provide proof of insurance. Work needed to

complete project will involve placing fiber thru parking garage. We now have a coax line in place.

TWC would like to go the same path. We can ty strap to existing coax. Fiber will be tight, no slack.

Core drill into electrical room next to coax. Then over to Dr. Whites office.

If you have any questions you can reach me at:

Office 330-963-3620-ext1216-555-1172 Cell 216-701-6361

Thank You

Steve Handshaw

Exhibit A - 2

City of Hudson, OH



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification. Map Scale 1 inch = 110 feet 11/18/2015

PLACING FIBER IN PAVING GARAGE
TY STRAP TO EXISTING COAX THAT RUNS
THRU NOW. FROM VAULT TO ELECTRICAL RM.
OVER TO DR WHITE 89 1st ST



Exhibit A - 4



