

March 28, 2016

Section 1: DEFINITIONS

For the purpose of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense includes 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 is always mandatory and not merely directory, except where noted. Where the following definitions are in conflict with definitions in law, it is the express intent that the definition in federal law shall take precedence.

- (a) Agreement: this agreement, unless stated explicitly otherwise
- (b) Cable License or Cable Television Renewal License: Shall mean the Cable Television Renewal License granted by the Town to Comcast of Massachusetts/Virginia, Inc. dated August 25, 2003, or any successor license, and any additional cable television license granted by the Town.
- (c) Cable Service: The one-way transmission to Subscribers of video programming or Other Programming Services, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) Cable Television System or Cable System: A facility consisting of a set of closed transmission paths 19 and associated Signal generation, reception and control equipment designed to provide Cable Service (including video programming) to multiple Subscribers within a community unless such system does not use 2 any public rights of way.
- (e) Channel or Video Channel: A portion of the electromagnetic frequency spectrum which is used in a 23 Cable System and which is capable of delivering a television channel. With respect to PEG Channel, I-Net and I-Loop channel requirements, the definition of channel shall also mean a minimum allocation of 6 Mhz of bandwidth.
- (f) Designee: MCCI
- (g) Contracting Authority: The Board of Selectmen of the Town of Montague.
- (h) Educational Channel: Any channel, or portion thereof, which has been allocated for use by the Public Schools or its designee(s).
- (i) Effective Date: March 28, 2016
- (j) FCC: The acronym for the Federal Communications Commission or any successor agency.
- (k) Governmental and Public Channel: Any channel, or portion thereof, which has been allocated for use by the Town, the Contracting Authority or its designee(s).
- (l) Institutional Network: A communication network which is constructed and operated by the cable operator and which is generally available only to Subscribers who are not residential Subscribers.
- (m) PEG: The acronym for Public, Educational, and Governmental; used in conjunction with Access Channels, support and facilities.
- (n) PEG Access Channels: Any Channel(s) made available for the presentation of PEG Access

programming.

- (o) Programming or Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (p) PROVIDER: Montague Community Cable, Inc. (MCCI).
- (q) Public Access Channel(s): Any channel, or portion thereof, which has been allocated for use by members of the community to communicate their activities, opinions and ideas without interference or censorship through the creation of cable television programming and other means.
- (r) Public Schools: The Gill-Montague Regional School District.
- (s) Renewal License: License between Town and Comcast of Massachusetts/Virginia, Inc.
- (t) Subscriber: Any person, firm, corporation or other entity who or which elects to subscribe to for any purpose, a Cable Service provided by the Licensee by means of, or in connection with, the Cable Television System.
- (u) Town: The Town of Montague, Massachusetts.

#### Section 2: DESIGNATION OF ACCESS PROVIDER:

Subject to the terms and conditions herein, the Contracting Authority hereby designates Montague Community Cable, Inc. (MCCI) as the Designated Access Provider effective March 28, 2016.

#### Section 3: DURATION:

3.1 TERM: This Agreement shall be effective upon the date of its execution for a period of three (3) years.

3.2 RENEWAL: This Agreement may be renewed for up to 7 years upon the expiration of this Agreement subject to positive performance reviews and Town Meeting approval. The process leading to renewal of this Agreement shall be initiated by a written request from PROVIDER to the Town at least 6 (six) months prior to the end of this Agreement. The request shall include comments on the current Agreement and any items for discussion as part of the renewal process which may lead to renegotiation of various item contained within current contract.

#### Section 4: TERMINATION:

4.1 This Agreement shall terminate upon the adjudication of the bankruptcy of PROVIDER.

4.2 This Agreement may be terminated if the Contracting Authority determines that PROVIDER has failed to fulfill its responsibilities pursuant to any of the terms and conditions herein; 501(c)(3) tax exempt status; or for unlawful activity on the part of MCCI, its officers or directors; upon failure of MCCI to cooperate with Contracting Authority in any manner impeding CONTRACTOR'S ability to comply with the Cable Television License; or upon determination by the Attorney General of a breach of fiduciary duty.

- (a) Before any such termination, provider shall be given a minimum of one hundred twenty 120 days advance written notice, which notice shall set forth the reasons for the proposed termination and shall advise that it will be provided an opportunity to be heard by the Contracting Authority before any such action is taken. Said notice shall state the date, time, and place of such hearing. In no event shall such hearing be held less than thirty (30) days following delivery of such notice to PROVIDER.

(b) At said hearing, PROVIDER will be provided an opportunity to respond to the reasons for the proposed termination and to discuss them with the Contracting Authority. The PROVIDER shall be entitled to reply in writing to said reasons, a copy of which response shall be delivered to the Contracting Authority no later than thirty (30) days following said hearing. The Contracting Authority shall make no decision concerning termination until it has considered said response.

4.3. All equipment purchased by the Town or its Designee(s) under the terms of this Agreement with funds attributable to the Cable License, shall be the property of the Town. Upon termination of this Agreement, equipment so purchased cannot be used to satisfy any present or future indebtedness of PROVIDER, and shall be returned to the Town along with a complete inventory list.

#### Section 5: OBLIGATIONS OF PROVIDER:

5.1 PROVIDER will maintain its status as a 501(c)(3) non-profit educational corporation eligible for exemption from taxes under federal and state law.

5.2 PROVIDER will maintain a governance structure (Board of Directors) which recognizes its obligations to the Town, the schools and the community. PROVIDER Board of Directors acknowledges that they have a fiduciary duty to the corporation by operation of law, and accepts a fiduciary duty to the Selectmen and cable subscribers of the Town of Montague as a condition of this Agreement

5.3 The purpose of public access is to allow members of the community to communicate their activities, opinions and ideas without interference or censorship through the creation of cable television programming and other means.

1. With respect to the Governmental and Public Access Channel, PROVIDER will
  - (a) Be responsible for programming free from censorship of program content;
  - (b) Develop and promote programming including but not limited to cultural, literary, educational, governmental and public affairs programming on the Governmental and Public Access Channel; production
  - (c) Make the public access facilities and channels available in a non-discriminatory manner to encourage the exchange of ideas and opinions on a broad range of topics
  - (d) Be responsible for fund-raising to supplement Public Access operations;
2. PROVIDER will also be responsible for consistent outreach to the various segments of the community to encourage use of the public access channel.
3. PROVIDER will also cablecast all Town Meetings, all Board of Selectmen meetings and, as determined by the Town of Montague, or its appropriate delegates (Town Admin), in consultation with the PROVIDER other important government meetings or public hearings, with five days written notice delivered to PROVIDER by Department Head or Chair of Committee. Said requests will be fulfilled on a first come first served. PROVIDER will make every good faith effort to fulfill these requests.

5.4 PROVIDER shall manage and operate the PEG Access channels, equipment and facilities on a non-discriminatory, non-commercial basis. In managing and operating the channels, PROVIDER will have the following responsibilities:

- (a) Teach television skills to individuals and community groups;

- (b) Manage funds designated for PEG access television;
- (c) Schedule PEG cablecasting;
- (d) Manage and maintain PEG facilities and equipment;
- (e) Be responsible for ensuring an acceptable level of technical quality of all programs cablecast on its system, pursuant to FCC regulations, and the requirements of the Cable License; and
- (f) PROVIDER is not obligated to cablecast any PEG Access program that does not meet the FCC technical standards. However, a decision not to cablecast a program due to technical problems shall in no way involve consideration of the actual content of the program itself. PROVIDER shall not be held responsible for technical problems originating from the Cable Licensee.

5.5. PROVIDER shall promulgate regulations governing PEG access including but not limited to levels of service, use of equipment and facilities, training programs, membership, outreach activities, cablecasting procedures and operating policies and procedures.

5.6 PROVIDER shall maintain a studio in Montague and make the studio available for use by producers or users on a fixed schedule.

5.7. PROVIDER shall maintain a log of programming that is cablecast on the PEG channels, and a record of PEG producers. Logs shall be available for public inspection and retained by PROVIDER for a minimum of three (3) years.

#### 5.8 REPORTS:

- (a) Quarterly: PROVIDER shall, at its own expense, provide detailed quarterly financial reports to the Cable Advisory Committee and the Board of Selectmen regarding income, expenses, and any written complaint as detailed in section 5.9. The line-item financial report shall include at a minimum all specific capital expenditures, direct and indirect personnel expenses. The quarterly financial report will serve as a means of evaluating the performance of PROVIDER.
- (b) Annually: PROVIDER shall, at its own expense, provide detailed annual reports to the Cable Advisory Committee and the Board of Selectmen regarding activities, income and expenses. This will be supplied within 60 days but no case, more than 90 days from the end of each calendar year.
- (c) Audited Annual Financial Report:

An audited financial report will be supplied within 30 days of the completion of the audit by the independent auditor. All attempts will be made to finish the audit without extension, no later than August 31<sup>st</sup>.

The Report will serve as a means of evaluating the performance of PROVIDER and identifying new goals and directions.

This Annual Report shall contain at least the following items:

- 1) Summary of the activities in the development of the PEG access program;
- 2) Summary of input received from community members and organizations;
- 3) Changes in staff roster or staff job descriptions from prior reports;
- 4) Description of outreach presentations, mailings, surveys and results;
- 5) Description of fundraising;
- 6) Description of training;
- 7) Description of facility and equipment use;

- 8) Description of PEG access programming by channel; and PEG programming developed by
- 9) Current inventory reflecting equipment purchased and retired and expenditure of resources.

5.9 PROVIDER shall maintain a written complaint/compliment file available to the general public, upon request.

5.10 The President of the board of PROVIDER shall make themselves and staff available from time to time to advise the Cable Advisory Committee and Contracting Authority on matters concerning PEG Access.

5.11 PROVIDER shall engage in outreach activities designed to inform Town residents and organizations about the availability and use of PEG access channels and to encourage their use.

5.12 PROVIDER will keep a current database of access programs in its library and make it available during normal business hours.

5.13 PROVIDER will defend, indemnify and hold harmless the Town and its elected officials, appointed boards and commissions, employees, and agents from and against all losses, damages, liabilities, claims, demands, judgments, settlements, costs, and expenses including penalties, interest and reasonable attorneys' fees and disbursements resulting from or arising out of

- 1) Any breach by PROVIDER of its obligations under this Agreement;
- 2) Any personal injury or property damage occurring after the effective date of this Agreement arising out of the use by any person of the facilities or equipment owned or leased by PROVIDER (other than personal injury or property damage resulting from the negligence or willful misconduct of the Town or its elected officials, members of appointed boards and commissions, employees or agents;
- 3) Any personnel grievances concerning the hiring, firing and conditions of employment of PROVIDER employees. Except where PROVIDER is primarily at fault under Massachusetts statute and case law, or under common law principles, PROVIDER's obligation under this section shall not apply to claims, demands, actions or suits arising from the Town's government or educational access cablecasting activities.

5.14 PROVIDER shall require every access producer or user to indemnify the Town and PROVIDER and hold both PROVIDER and Town harmless against any claims arising out of any program or program material produced and/or cablecast, including but not limited to, claims in the nature of libel, slander, invasion of privacy of publicity rights, non-compliance with applicable laws, license fees and the unauthorized use of copyrighted material; and shall prepare a written hold harmless agreement in a form approved by CONTRACTOR to be executed by every access user prior to use of PROVIDER facilities or cablecasting of any user-produced programming.

5.15 PROVIDER shall provide a community calendar on the public access channel(s) for the purpose of announcing programming and access services, making public service announcements, and allowing the Town, schools or other non-profit organizations to make announcements. The community calendar shall be updated regularly to serve the needs of Montague cable subscribers. The community calendar will be transmitted when regular programming is not scheduled.

5.16 PROVIDER shall maintain workers' compensation, comprehensive general liability, and non-owned vehicle liability insurance coverage in force throughout the course of this Agreement, naming the Town as an also insured, and it shall provide the Town with certificates of insurance annually. PROVIDER shall inform the Town promptly in writing in the event any policy of insurance required herein is terminated, cancelled or amended.

5.17 Provider shall assume the cost and responsibility for insuring all Town-owned equipment used to meet the local access needs.

5.18 PROVIDER shall be responsible for locating and arranging for use of its facilities, including payment of rent, for the PEG access purposes under this Agreement, except that PROVIDER shall not have to pay for or maintain any Town or school facilities used for PEG access purposes.

5.19 PROVIDER shall maintain line-item accounting, budget, and business systems which meet generally accepted accounting practices for all management, operation, protection, investment, and oversight of the Montague facility and community access services required by this Agreement.

5.20 PROVIDER shall provide community access services to those who live, work or attend school in Montague on a first-come, first-served, non-discriminatory basis using PROVIDER facility, equipment, staff and other resources as PROVIDER deems necessary and appropriate to fulfill community access management needs.

5.21 PROVIDER shall make every reasonable effort to recruit Montague residents to serve on the Board of Directors.

5.22 PROVIDER shall make every reasonable effort to develop Montague-based programming.

## Section 6: OBLIGATIONS OF THE CONTRACTING AUTHORITY

6.1. PROVIDER shall receive funding support provided in the License Agreement between the Contracting Authority and Comcast of Massachusetts/Virginia, Inc. effective on October 1, 2015, in the amount consistent with section 7.2 of Cable license, currently 5% of gross cable revenue. Funds received, (100%) by the Contracting Authority for PEG Access will be dispersed to the Provider within 30days of receipt.

6.2. CONTRACTOR and the Cable Advisory Committee shall be responsible for advising PROVIDER on policies, guidelines and programming the governmental and educational portion of the public/governmental access channel.

6.3. PROVIDER may at any time file a written complaint with the CONTRACTOR concerning operations of the cable system that have a bearing on PROVIDER's performance under this Contract. The CONTRACTOR shall investigate said complaints pursuant to the manner spelled out in the Renewal License and/or other rules or regulations established by the Town

6.4. The Town is a governmental entity that is subject to the Public Records laws of the Commonwealth. The Town shall comply with that law and shall honor all public records requests submitted to it relating to all aspects of this Agreement.

6.5. CONTRACTOR retains the right to audit PROVIDER's financial affairs at the Town's expense. PROVIDER shall cooperate with all aspects of the preparation of such audit.

6.6. The Town shall not consider the content of public access programming, including the producer's choice of subject matter and the point of view expressed, in making any decision regarding the allocation or appropriation of funds for PROVIDER, or the termination of this contract

6.7 The Town (CAC) will make every effort to attend Provider Quarterly meetings.

6.8. The Town shall, at its sole cost and expense, but only to the extent lawful for local governments, indemnify and hold harmless PROVIDER against any claims arising out of the Town's breach of this Agreement. Indemnified expenses shall include but not be limited to all out-of-pocket expenses.

6.9 PROVIDER shall to the extent possible comply with but not be bound by the terms of the Massachusetts Open Meeting Law, M.G.L. c.30A, §21; and with the Massachusetts Public Records law, M.G.L. c.66, §10, as

they may from time to time be amended (see Section 8 of MCCI bylaws).

Provider shall provide notice to the Town Clerk and CAC Chair of upcoming Board meetings 14 days prior to said meeting.

#### Section 7 OBLIGATIONS OF THE PUBLIC SCHOOLS

7.1. The Public Schools may designate an individual to serve on the Board of Directors of PROVIDER.

#### Section 8: PERFORMANCE EVALUATION HEARINGS:

8.1 Annually, PROVIDER shall take part in a Performance Evaluation Hearing to be conducted at a Public Hearing overseen by the Cable Advisory Committee ("CAC")

8.2 The Town shall schedule a performance evaluation within thirty (30) days of receipt of the PROVIDER annual report but no later than the sixth (6<sup>th</sup>) month of the year. CAC will schedule this performance evaluation with the PROVIDER.

8.2 The purpose of said public hearing shall be to determine whether PROVIDER is performing its responsibilities pursuant to this Agreement including, without limitation, public access programming, managing the annual payments for PEG access, training residents and scheduling the PEG channels.

8.3 The CAC shall prepare a report within in 60 days after said annual Public hearing(s), which shall be available to PROVIDER and the general public. Problem areas identified at the public hearings and in the Town's report shall be addressed by PROVIDER in a timely manner. PROVIDER shall provide the Town and CAC with written reports monthly until problem areas identified are cured.

#### Section 9: SEVERABILITY

9.1 If any section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction in the Commonwealth of Massachusetts or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision, hereof.

#### Section 10: MISCELLANEOUS

10.1. At all times during the Agreement term, should the parties hereto agree that equipment necessary for operation of an Institutional Network is to be located within the facilities of PROVIDER, the Town shall have the right to establish and enforce, and PROVIDER will comply with and implement, rules and procedures that the Town deems appropriate and necessary for purposes of data security, including physically locking, and regulating access to, whatever space may house the equipment holding or transmitting such data. Upon written request, The Town will be given physical access to such space(s) during the Agreement term.

10.2. This Agreement is the entire Agreement of the parties and supersedes all prior negotiations, Agreements, or contracts whether written or oral.

10.3. PROVIDER shall not assign or transfer any interest in this Agreement without prior written consent of the Town, provided, however, that nothing herein shall prevent PROVIDER from subcontracting the performance of any provision or obligation required by this Contract, as long as PROVIDER remains primarily responsible to the Town for the performance of such provision or obligation.

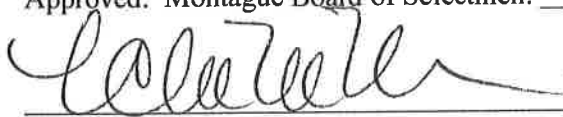
10.4. This Agreement may be amended upon the mutual Agreement of the Town and PROVIDER. Amendments shall be in writing and effective upon execution by duly qualified officers of the Town and PROVIDER.


10.5. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts. The parties hereto subject themselves to the jurisdiction of the courts of the Commonwealth of Massachusetts,

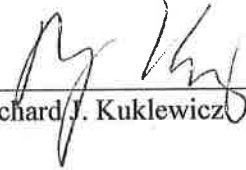
county of Franklin, for the resolution of any dispute, action or suit arising in connection with this Agreement.

10.6. Any notice required to be given or served upon any party in connection with this Agreement shall be in writing and shall be deemed to have been given and received (a) three business days after the registered or certified letter containing the notice, properly addressed, with the postage prepaid, is deposited in the United States Mail; or (b) if made in any other manner, upon the actual delivery to and receipt by the party to whom it is addressed. Notice shall be given to the parties at the following addresses: Town of Montague, 1 Avenue A, Turners Falls, MA and MCCI, 34 Second Street, Turners Falls, MA 01376

Approved: Montague Board of Selectmen: March 28, 2016

  
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Michael M. Nelson, Board of Selectmen, Chairman

  
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Christopher M. Boutwell, Sr.,

  
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Richard J. Kuklewicz