

AGREEMENT
BETWEEN
THE TOWN OF CONCORD
AND
CCTV, INC.

Section 1: DEFINITIONS

For the purposes 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 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 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) CCTV: CCTV, Incorporated
- (b) Cable Advisory Committee: The Town of Concord Cable TV Committee appointed by the Concord Board of Selectmen.
- (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 system consisting of a set of closed transmission paths 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 any public rights of way.
- (e) Channel or Video Channel: A portion of electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel. With respect to a PEG Channel, the definition of channel shall also mean a minimum allocation of 6 Mhz of bandwidth.
- (f) Contracting Authority: The Town Manager of the Town of Concord.

- (g) Educational Channel: Any Channel, or portion thereof, which has been allocated for use by the Public Schools or its designee(s).
- (h) Effective Date: The date which the undersigned parties note in affixing their duly authorized signatures
- (i) FCC: The Federal Communications Commission or any successor agency.
- (j) Government Channel: Any channel, or portion thereof, which has been allocated for use by the Town, the Contracting Authority or its designee(s).
- (k) 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.
- (l) PEG: The acronym for Public, Educational, and Governmental; use in conjunction with Access Channels, support and facilities.
- (m) PEG Access Channels: Any Channel(s) made available for the presentation of PEG Access programming.
- (n) Programming or Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (o) 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.
- (p) Public Schools: The Concord-Carlisle Regional School District and the Concord Public Schools.
- (q) Renewal License: The non-exclusive Cable Television License granted to Comcast of Massachusetts III, Inc. by an instrument effective April 22, 2004.
- (r) 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.
- (s) Town: The Town of Concord, Massachusetts.

Section 2: DESIGNATION OF ACCESS PROVIDER

Subject to the terms and conditions herein, the Contracting Authority hereby designates CCTV, Inc. as the Designated Access Provider under the terms of the Renewal License effective April 22, 2004 granted by the Town to Comcast of Massachusetts III, Inc.

Section 3: DURATION

This Agreement shall be effective upon the date of its execution and, providing the Concord Town Meeting shall vote to waive the requirements of MGL Ch. 30B with respect to the length of contracts into which the Town is permitted to enter, shall terminate upon the expiration of the Renewal License, or in the event that Town Meeting does not so agree, at the end of three years from its effective date, or at such time as is provided in Section 4 of this Agreement.

Section 4: TERMINATION

- 4.1 This Agreement shall terminate upon the adjudication of the bankruptcy of CCTV.
- 4.2 This Agreement may terminate if the Contracting Authority determines that CCTV has failed to fulfill its responsibilities pursuant to the terms and conditions herein.
 - (a) Before any such termination, CCTV shall be given a minimum of sixty (60) days advance written notice, which shall set forth the reasons for the proposed termination and shall advise CCTV 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 CCTV.
 - (b) At said hearing, CCTV will be provided an opportunity to respond to the reasons for the proposed termination and to discuss them with the Contracting Authority. CCTV shall be entitled to reply in writing to said reasons, a copy of which 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 CCTV may terminate this Agreement by a majority vote of its Board of Directors at a regular meeting where this item shall appear on the agenda, as shall be specified by the Bylaws of the Corporation.

- (a) CCTV shall provide the Contracting Authority with at least sixty (60) days advance written notice of its intention to terminate this Agreement. Said notice shall set forth the reasons for the proposed termination, and shall advise the Contracting Authority that it shall be provided an opportunity to be heard by the Board of Directors regarding such proposed termination before any action is taken. Said notice shall state the date, time, and place at which said hearing shall occur. In no event shall said hearing be held less than thirty (30) days following receipt of such notice to the Contracting Authority.
- (b) At said hearing, the Contracting Authority shall be provided an opportunity to respond to the reasons for the proposed termination and an opportunity to discuss them with the Board of Directors. The Contracting Authority shall be entitled to reply in writing to said causes and reasons for termination, a copy of which shall be delivered to the Board of Directors no later than thirty (30) days following said hearing. The Board of Directors shall make no decision concerning termination until it has considered said response.

4.4 All equipment and supplies purchased by the Town or CCTV with funds provided by the Licensee under the terms of the Renewal 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 CCTV and is subject to continuing access by the Town, including the right of removal.

4.5 If this Agreement is terminated by the Contracting Authority pursuant to Section 4.3, then the Contracting Authority will use its best efforts to resolve, through reassignment, discontinuation or otherwise, all legitimate, ongoing PEG Access operational expenses from CCTV to the Contracting Authority or a successor PEG Access provider.

Section 5: RENEWAL

This Agreement may be renewed upon the expiration of this Agreement in accordance with the provisions of MGL CH. 30B. The process leading to renewal of this Agreement shall be initiated by a written request from CCTV to the Contracting Authority at least one year 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.

Section 6: OBLIGATIONS OF CCTV

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

6.2 CCTV will maintain governance structure (Board of Directors) which recognizes its obligations to the Town, the schools and the community and which maintains

a balance among its public, educational and governmental access responsibilities.

- 6.3 The purpose of public access is to allow members of the community to communicate their activities, opinions and ideas without interference or censorship, in compliance with FCC standards for decency in public television through the creation of cable television programming and other means. With respect to the Public Access Channel(s), CCTV will:
- (a) be responsible for programming free from censorship of program content;
 - (b) enable development and promotion of programming including but not limited to cultural, literary, education and public affairs programming on the Public Access Channel;
 - (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 fundraising to supplement Public Access operations; and
 - (e) be responsible for consistent outreach to the various segments of the community to encourage use of the public access channel.
- 6.4 With respect to the Governmental and Educational Access Channels, CCTV and the Contracting Authority and the Public Schools will mutually agree on the responsibilities of CCTV, which shall include CCTV following mutually agreed upon policies and guidelines for programming the Governmental and Educational Channels established by the Contracting Authority and the Public Schools respectively.
- 6.5 CCTV will manage and operate the PEG Access Channels, equipment and facilities on a non-discriminatory, non-commercial basis. In managing and operating the channels, CCTV will carry out such activities as:
- (a) holding workshops for the purpose of teaching television skills to individuals and community groups;
 - (b) managing funds designated for PEG access television;
 - (c) scheduling PEG cablecasting;
 - (d) managing and maintaining PEG facilities and equipment;

- (e) being responsible for ensuring an acceptable level of technical quality of all programs cablecast on its system, pursuant to FCC regulations. CCTV 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. CCTV shall not be held responsible for technical problems under control of the Cable System.
- 6.6 CCTV 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.
- 6.7 CCTV may charge reasonable fees for services of CCTV or its employees or agents or the use of CCTV facilities as necessary. Such fees shall not be used to interfere with or censor a user who seeks to produce public access programming. Use of equipment, facilities, and access to training shall not be denied to any Concord resident on the basis of inability to pay such fees.
- 6.8 CCTV 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 CCTV for a minimum of three (3) years.
- 6.9 Within ninety (90) days after the end of CCTV's fiscal year, CCTV shall provide at its own expense financial and operating reports to the Contracting Authority and the Cable Advisory Committee. The Operating report shall reflect input received from community members and organizations and will serve as a means of evaluating the performance of CCTV and identifying new goals and directions. This report shall address at least the following items:
- (a) a summary of the activities in the development of the PEG access program;
 - (b) a schedule of rates and charges for PEG Access related activities;
 - (c) the most recent budget report as provided to CCTV Board;
 - (d) changes in staff roster or staff job descriptions from prior reports;
 - (e) outreach presentations, mailings, surveys and results;
 - (f) fundraising;
 - (g) training;
 - (h) facility and equipment use;

- (i) PEG access programming by channel; and
 - (j) PEG programming developed by CCTV staff.
- 6.10 CCTV shall make the PEG channels available for cablecast of all annual and special Town Meetings, public hearings preliminary to Town Meetings, Board of Selectmen and School Committee meetings, and other committee meetings and community events as requested. Recordings of such meetings will be kept at CCTV until, within three (3) years, they are transferred to the Concord Free Public Library.
- 6.11 The directors, managers and staff of CCTV shall make themselves available from time to time to advise the Contracting Authority on matters concerning PEG Access.
- 6.12 CCTV 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.
- 6.13 CCTV will keep a current data base of access programs in its library and make it available during its normal business hours, which shall be publicly and conspicuously posted.
- 6.14 CCTV will 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 a) any breach by CCTV of its obligations under this Agreement; b) any bodily injury, 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 CCTV (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); or c) any personnel grievances concerning the hiring, firing and conditions of employment of CCTV employees. Except where CCTV is primarily at fault under Massachusetts statute and case law, or under common law principles, CCTV's obligation under this section shall not apply to claim, demands, actions or suits arising from the Town's government or educational access cablecasting activities.
- 6.15 CCTV shall require every access user to indemnify the Town and CCTV and hold both 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 or privacy of publicity rights, non-compliance with applicable laws, license fees and the unauthorized use of copyrighted material.

- 6.16 CCTV 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 certain announcements. The community calendar shall be updated regularly and appropriately to serve cable subscribers in the best fashion. The community calendar will be transmitted at certain times when regular programming is not scheduled.
- 6.17 CCTV will maintain workers' compensation, liability, content liability, directors and officers, general comprehensive and non-owned vehicle liability insurance coverage in force throughout the course of the Agreement naming the Town as additional insured and will provide the Town with certificates of insurance annually. Liability coverage shall be in an amount not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate. The Contracting Authority may review the insurance requirements from time to time and make reasonable adjustments in coverage level as may be necessitated by changes in risks and exposures and market conditions.
- 6.18 The Contracting Authority will work cooperatively with CCTV in assisting CCTV to locate and arrange for use of facilities, including payment of rent, if any, for the PEG access purposes under this contract.
- 6.19 CCTV will maintain accounting, budget, and business systems for the management, operation, protection, investment, and oversight of the facility and community access services that comply with generally accepted accounting practices.
- 6.20 CCTV and the Contracting Authority will work cooperatively to ensure that Comcast of Massachusetts III, Inc. meets the terms of its Renewal License with the Town with respect to PEG access.
- 6.21 CCTV will provide community access services to those who live, work or attend school in Concord on a first-come, first-served, non-discriminatory basis using CCTV facilities, equipment, staff and other resources as CCTV deems necessary to fulfill community access management needs.

Section 7: OBLIGATIONS OF THE CONTRACTING AUTHORITY

- 7.1 The Contracting Authority shall ensure that the terms and financial arrangements regarding PEG access in the Renewal License are executed and implemented in a timely manner.
 - (a) The Access Provider shall receive funding support provided in the License Agreement between the Contracting Authority and Comcast of Massachusetts III, Inc effective April 22, 2004.

- (b) It is the intent of the Contracting Authority to retain the franchise fee of \$.050/subscriber received under the terms of the License Agreement between the Town and Comcast of Massachusetts III, Inc for the use of the Contracting Authority in enforcing the provisions of the License Agreement. It is further the intent of the Contracting Authority to make this money available to the Access Provider if unused or uncommitted by the Contracting Authority by March 1 of each year. Action to accomplish and necessary transfer shall be taken at the annual Town Meeting.
- 7.2 The Contracting Authority shall be responsible for advising CCTV on policies, guidelines and programming the governmental access channel.
- 7.3 The Contracting Authority will assume responsibility for providing property insurance for the replacement value of equipment used to meet the needs of the PEG channels.
- 7.4 The Contracting Authority may designate an individual to serve on the Board of Directors of CCTV.
- 7.5 The Town is a governmental entity that is subject to the Public Records Law of the Commonwealth. The Town will comply with that law and will honor all public records requests submitted to it relating to all aspects of this Agreement.
- 7.6 The Contracting Authority retains the right to audit CCTV's financial affairs at the Town's expense. CCTV shall cooperate in the preparation of such audit.
- 7.7 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 decisions regarding the allocation or appropriation of funds for CCTV, or the termination of this contract.
- 7.8 The Town shall, at its sole cost and expense, but only the extent lawful for local governments, indemnify and hold harmless CCTV against any claims arising out of the Town's breach of this contract. Indemnified expenses shall include but not be limited to all out-of-pocket expenses such as attorney's fees.
- 7.9 CCTV shall consult with the Contracting Authority before making any purchases of capital equipment to be used for PEG access.
- 7.10 CCTV may at any time file a written complaint with the Contracting Authority concerning operations of the cable system that have a bearing on CCTV's performance under this Contract. The Contracting Authority shall investigate said complaints pursuant to the manner spelled out in the Renewal License and/or other rules or regulations established by the Town.

Section 8: THE PUBLIC SCHOOLS

- 8.1 The Public Schools shall be responsible for development of any school district educational programs that it wishes to have broadcast on the educational access channel.
- 8.2 The Public Schools may designate an individual to serve as its representative on the Board of Directors of CCTV.
- 8.3 CCTV is encouraged to consult with the Public Schools before purchasing capital equipment to be used in conjunction with the PEG channels.

Section 9: PERFORMANCE EVALUATION HEARINGS

Every year, within ninety days of the anniversary date of the execution of this Agreement, CCTV will take part in a public performance evaluation, in the form of a public hearing conducted by the Town's Cable Advisory Committee. The process and conduct of this evaluation will be determined by the Town and communicated to CCTV within the first thirty days of the ninety day evaluation period. The purpose of said evaluation will be to determine whether CCTV is performing its responsibilities pursuant to the contractual agreement including, without limitation, public access programming, managing the annual payments for PEG Access, training residents and scheduling PEG Access channels. After the first performance evaluation, the frequency of said evaluations may be changed by the advance, mutual written agreement of the Town and the designated PEG Access provider.

Section 10: SEVERABILITY

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 11: MISCELLANEOUS

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

- 11.2 This Agreement is the entire Agreement of the parties and supersedes all prior negotiations, Agreements, or contracts whether written or oral.
- 11.3 CCTV shall not assign or transfer any interest in this Agreement without prior written consent of the Town, provided, however, that nothing herein shall prevent CCTV from subcontracting the performance of any provision or obligation required by this Contract, as long as CCTV remains primarily the responsibility to the Town of the performance of such provision or obligation.
- 11.4 This Agreement may be amended upon the mutual Agreement of the Town and CCTV. Amendments shall be in writing and effective upon execution by duly qualified officers of the Town and CCTV.
- 11.5 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 Middlesex, for the resolution of any dispute, action or suit arising in connection with this Agreement.
- 11.6 This Agreement may be amended only by written agreement of both the Contracting Authority and CCTV, Inc.
- 11.7 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 Concord
 Town Manager's Office
 22 Monument Square
 Concord, MA 01742

CCTV, Inc.
 c/o 500 Walden Street
 Concord, MA 01742

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this _____ day of _____, 2005.

CCTV, INC.

TOWN OF CONCORD

 By its Duly Authorized Officer

 By the Town Manager

AGREEMENT
BETWEEN
THE TOWN OF CONCORD
AND
CCTV, INC.

AMENDMENT #1

The Agreement between the Town of Concord and CCTV, Inc., dated March 9, 2005, is hereby amended in accordance with the provisions of Section 11.4 contained therein. In signing Amendment #1, the parties acknowledge that all of the provisions of the Agreement not specifically addressed within this Amendment remain in full force and effect.

The Agreement is amended by revising Section 4.4 as follows:

4.4 All equipment and supplies purchased by the Town or CCTV with funds provided by the Licensee under the terms of the Renewal License shall be the property of CCTV until this Agreement is terminated as provided herein. Upon termination of this Agreement, ownership and control of equipment so purchased shall be transferred to the Town. Said equipment cannot be used to satisfy any present or future indebtedness of CCTV and is subject to continuing access by the Town as well as the right of removal.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this _____ day of _____, 2005.

CCTV, INC.

TOWN OF CONCORD

By its Duly Authorized Officer

By the Town Manager

AGREEMENT
BETWEEN
THE TOWN OF CONCORD
AND
CCTV, INC.

AMENDMENT #1

The Agreement between the Town of Concord and CCTV, Inc., dated March 9, 2005, is hereby amended in accordance with the provisions of Section 11.4 contained therein. In signing Amendment #1, the parties acknowledge that all of the provisions of the Agreement not specifically addressed within this Amendment remain in full force and effect.

The Agreement is amended by revising Section 4.4 as follows:

4.4 All equipment and supplies purchased by CCTV with funds provided by the Licensee under the terms of the Renewal License shall be the property of CCTV until this Agreement is terminated as provided herein. Upon termination of this Agreement, ownership and control of equipment so purchased shall be transferred to the Town. Once purchased, said equipment shall not be disposed of without the prior approval of the Town. Said equipment shall not be used to satisfy any present or future indebtedness of CCTV and is subject to continuing access by the Town as well as the right of removal.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this _____ day of _____, 2005.

CCTV, INC.

TOWN OF CONCORD

By its Duly Authorized Officer

By the Town Manager

AGREEMENT
BETWEEN
THE TOWN OF CONCORD
AND
CCTV, INC.

AMENDMENT #2

The Agreement between the Town of Concord and CCTV, Inc., dated March 9, 2005, is hereby amended in accordance with the provisions of Section 11.4 contained therein. In signing Amendment #2, the parties acknowledge that all of the provisions of the Agreement not specifically addressed within this Amendment and the previous Amendment #1 remain in full force and effect.

The Agreement is amended by revising Section 7.1(b) as follows:

(b) It is the intent of the Contracting Authority to retain the franchise fee of \$.050/subscriber received under the terms of the License Agreement between the Town and Comcast of Massachusetts III, Inc. The Contracting Authority is responsible for enforcing the provisions of the License Agreement, and it is recognized that these modest revenues assist in partially offsetting various costs associated with this responsibility.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this _____ day of _____, 2006.

CCTV, INC.

TOWN OF CONCORD

By its Duly Authorized Officer

By the Town Manager