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CITY OF AMESBURY
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SPONSORED BY: Kassandra Gove **BILL No. 2024-029**
Kassandra Gove, Mayor

An Order to request the City Council vote to authorize the Mayor to enter into an agreement between the City of Amesbury and its Public Education and Governmental (“PEG”) access provider, Amesbury Community Television (“ACTV”) for a term to expire on June 30, 2032.

Summary: The City seeks to enter into an 8-year agreement with its long-term Public Education and Governmental (“PEG”) access provider, Amesbury Community Television (“ACTV”). The proposed renewal agreement would continue this relationship for another 8 years, through to the term of the current Breezeline license, whose 10-year term will conclude on June 30, 2032. Under the proposed agreement, ACTV would receive annual grants of 70 % of the annual PEG access support payments (5% of each licensee’s Gross Revenues each year) (Art. IX) received from both the Breezeline and the Comcast licenses, intended as funding for ACTV’s annual budgeted operating expenses. In addition, ACTV would receive capital equipment support in the form of a \$25,000 grant from each licensee annually. In exchange for this funding support, ACTV will continue to be obligated to provide the extensive PEG access services to the City as set forth in Art. V, sec. 1.

Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same as follows:

That the City Council vote to authorize the Mayor to enter into an agreement between the City of Amesbury and its Public Education and Governmental (“PEG”) access provider, Amesbury Community Television (“ACTV”) for a term to expire on June 30, 2032.

ACCESS AGREEMENT

BETWEEN

AMESBURY COMMUNITY TELEVISION

AND

CITY OF AMESBURY, MASSACHUSETTS

Article I – PREAMBLE

WHEREAS, the City of Amesbury which is a municipal corporation organized under the laws of the Commonwealth of Massachusetts (“AMESBURY”), acting by and through the Mayor of AMESBURY (“Mayor” or “Mayor of AMESBURY”) as Issuing Authority within the meaning of MGL c. 166A s. 1, issued a Cable Television Renewal License (to Comcast Cable Communications Management LLC (“Comcast” or “Comcast License”) dated August 12, 2021, for the provision of cable television services within its municipal boundaries, and

WHEREAS AMESBURY, acting by and through its Mayor as Issuing Authority within the meaning of MGL c. 166A s. 1, issued an initial Cable Television License to Cogeco US (NH-ME) d/b/a Breezeline, dated July 1, 2022, (“BREEZELINE” or “BREEZELINE License”) (and together, “Both Licensees”), for the provision of cable television services within its municipal boundaries, and

WHEREAS, both the Comcast and BREEZELINE Licenses obligate both Licensees to make to AMESBURY certain annual and periodic grants of money called “PEG Access Support” and

WHEREAS, it is the intent of AMESBURY that such annual and periodic grants should be used, in part or in whole, for the support and furtherance of the town’s Public, Educational and Governmental (“PEG”) Access channels provided by Both Licenses; and

WHEREAS, Amesbury Community Television (“ACTV”) has been incorporated to provide to AMESBURY PEG Access programming contemplated by Both Licensees, and funded by the provision of PEG Access Support in Both Licenses, and

WHEREAS, it is the intent of AMESBURY to participate in the provision of PEG Access Services to the residents of AMESBURY as more fully provided by the terms of this Agreement, and by the terms of Both Licenses,

NOW THEREFORE, it is agreed by and between AMESBURY, acting by and through its Mayor, and ACTV, acting by and through its Board of Directors, as more fully set forth below.

Article II – DEFINITIONS

For the purpose of this agreement the following words, terms, phrases and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1. Access Agreement, or Agreement: The Access Agreement between AMESBURY and ACTV.
2. Access Channel or PEG Access Channel: A video channel which the Licensee(s) shall make available without charge for the purpose of transmitting programming by members of the public, AMESBURY municipal departments, agencies, public schools, educational, institutional and similar organizations.
3. Access Corporation: Amesbury Community Television (“ACTV”) designated by the Mayor of AMESBURY pursuant to Article III of this Agreement.
4. Access Facility of PEG Access Facility: The location from which the Access Corporation operates the public, educational and governmental (“PEG”) access functions at a studio to be located in AMESBURY, Massachusetts.
5. Access Programming, or PEG Access Programming: Programs on the designated Access Channels which must be non-commercial within the standards for underwriting applicable to the Public Broadcasting Service (PBS), or the standards necessary for ACTV to maintain its tax-exempt status within the applicable regulations of the Internal Revenue Service, and such programming excludes political advertising.
6. Amesbury Community Television (“ACTV”): The non-profit corporation, also known as “ACTV”, and designated by the Mayor of AMESBURY to manage and operate public, educational and governmental access programming in AMESBURY in accordance with this Agreement, the Licenses and 47 U.S.C. s. 531.
7. Cable Licenses: The license agreements between AMESBURY and Comcast and AMESBURY and BREEZELINE, authorizing both Licensees to own, operate and maintain a Cable Television Systems in AMESBURY and any future additional Licenses granted by the Mayor of AMESBURY to any additional future cable operator.
8. Commercial Program: Programming from which revenue is derived by any party, and programming the purpose of which is to conduct trade or commerce. It shall not include programming supported by underwriting grants or contributions of any kind.
9. Downstream Channel: A channel over which signals travel from the system headend to an authorized location within the system.

10. Educational Access or Education Channel: Any channel or time thereon which has been allocated by AMESBURY for educational use in accordance with this Access Agreement, Both Licenses, and 47 U.S.C. §531.
11. Governmental Access or Government Channel: Any channel or time thereon which has been allocated by AMESBURY, the Issuing Authority or municipal agencies in accordance with this Access Agreement, Both Licenses, and 47 U.S.C. §531.
12. Issuing Authority: The Mayor of AMESBURY who is party to this Access Agreement as provided by M.G.L. c. 166A s. 1., or the lawful Designee(s) thereof.
13. Licenses: The Cable Television Renewal License issued to Comcast Cable Telecommunications Management LLC, and the initial Cable Television License issued to Cogeco (NH-ME) d/b/a BREEZELINE.
14. Licensee: (and, collectively “Both Licensees”) Comcast of Massachusetts II, or its authorized transferee or successor, and Cogeco (NH-ME) d/b/a BREEZELINE, or its authorized transferee or successor.
15. PEG, or PEG Access: The acronym for public, educational and governmental access, as applied to programming provided pursuant to this Agreement and to Both Licensees.
16. Municipality (or “City” or “AMESBURY”): The City of Amesbury Massachusetts.
17. AMESBURY Mayor: The Mayor of the City of Amesbury, Massachusetts.
18. PEG Access Support or Access Support: Grants of money made under the terms of Both Licenses by the Licensees to AMESBURY to fund PEG Access programming.
19. Public Access: The availability for use by any resident of, or any organization based in or serving AMESBURY, of designated public access facilities, equipment, training and/or channels of the Cable Television System, as provided in Both Licenses with AMESBURY and in accordance with 47 U.S.C. §531.
20. Public Access or Public Channel: The channel designated for Public Access.
21. Upstream Channels: Means a channel over which signals travel from an authorized location to the cable system headend.

Article III - DESIGNATION

Pursuant to the respective Articles and provisions in Both Licenses, the Mayor of AMESBURY, as Issuing Authority, hereby Designates ACTV as its Designee and Access Corporation within the meaning of that term as employed in the Licenses. This Designation authorizes ACTV to receive certain PEG Access Support grants, as more fully set forth in Both Licenses, and in this Access Agreement, and further authorizes ACTV to operate for AMESBURY the PEG Access Channels and services described in the relevant terms of Both Licenses and in this Access Agreement.

Article IV - TERM OF DESIGNATION

Unless otherwise revoked for good cause shown as provided elsewhere within this Access Agreement, the term of this Designation shall become effective when executed by both parties hereto, and this Access Agreement shall continue through June 30, 2032, expiring one minute before midnight on that date.

Article V - OBLIGATIONS OF ACCESS CORPORATION

Section 1: General Obligations

Pursuant to section 6.2 in the currently effective Comcast Renewal License and the BREEZELINE Initial Cable Television License, as well as to other currently effective obligations, ACTV will provide the following general services to PEG Access users and to AMESBURY as follows:

- (1) Schedule, operate and program the PEG Access channels in accordance with section 6.3 of Both Licenses;
- (2) Manage the annual funding as provided in Article IX of this Agreement, below;
- (3) Conduct periodic training programs for AMESBURY residents and members of AMESBURY-based organizations in the skills necessary to produce PEG Access programming;
- (4) Purchase and/or lease equipment with the funds and equipment allocated for such purposes in Article IX of this Agreement, below;
- (5) Operate and maintain a PEG Access studio in AMESBURY, for PEG Access subscribers and other users in accordance with Article XII, section 12 of this Agreement, below;
- (6) Establish rules, procedures and guidelines for the use of PEG Access channels;
- (7) Engage in publicity, fund raising, outreach, referral and other support services to PEG Access users;
- (8) Assist PEG Access users in the production of video programming of interest to subscribers and/or related to issues, events, activities of interest to AMESBURY subscribers;

- (10) Accomplish such other tasks relating to the operation, scheduling and/or management of the PEG Access channels, facilities and equipment as ACTV may consider appropriate and necessary;
- (11) Provide access to production and post-production equipment and facilities, and technical assistance and production services to PEG Access users, in accordance with ACTV policies and procedures;
- (12) Provide coverage for all AMESBURY City Council meetings, Budget Hearings, and a monthly Mayor's one-hour program; and
- (13) Provide coverage for any other board, commission or committee meetings, upon written request of AMESBURY, dependent upon the availability of equipment, facilities and personnel.

Section 2: Public Access Use: Operating Rules and Procedures

ACTV shall be solely responsible for the management and operation of Public Access Programming on the cable system in AMESBURY, including training, quality of originated signals, scheduling the Public Access Channel(s) and managing the Access Facilities and equipment. ACTV shall promulgate and maintain a set of PEG Access operating rules and procedures, which ensure that training, equipment, facilities and Access Channel time shall be available to residents and members of any organizations serving AMESBURY. These rules shall ensure the right to use Access Channels, facilities and equipment on a non-discriminatory, first-come, first-served basis subject to the terms of this Access Agreement and subject also to ACTV's goal of establishing regularly scheduled PEG programming. PEG Access user compliance with such rules shall be monitored by ACTV and periodically reviewed by the Mayor's office.

Section 3: Programming on the Public Access Channel

Editorial discretion, the content of programming and the liability for programming placed on those Access Channel(s) which are operated by ACTV shall solely reside in and be the sole responsibility of the access producers and ACTV and neither AMESBURY nor Licensees. Notwithstanding the foregoing, ACTV programming shall be designed to achieve the purposes set forth in ACTV's Articles of Organization and By-Laws and shall consist of PEG Access Programming as defined by this Access Agreement, and in the Licenses, and bylaw. To these ends:

(a) ACTV shall not sell to a third party any proprietary interest that ACTV may have in any PEG Access Programming without first offering Licensees the right to purchase such interest by matching the best good faith offer tendered in writing by the third party;

(b) All liability, license and copyright fees associated with the programming produced by ACTV or placed on the PEG Access Channels serving AMESBURY shall be the sole responsibility of ACTV.

Section 4: Coverage of Local Meetings

ACTV shall be solely responsible for providing live coverage of all regularly scheduled AMESBURY City Council and School Committee Meetings. ACTV shall additionally be responsible for providing live coverage of other AMESBURY departmental meetings, to the fullest extent practicable and possible. In addition to the foregoing, ACTV shall provide live coverage of one additional public meeting, per quarter, if so requested by AMESBURY, upon thirty (30) days written notice, to the fullest extent practicable and possible.

Section 5: Cooperation with School Department

ACTV shall cooperate fully with the AMESBURY School Department in any manner necessary to ensure that the Educational Channel properly meets the needs of the AMESBURY School Department and AMESBURY.

Section 6: Cooperation with AMESBURY

ACTV shall cooperate with AMESBURY and the Mayor of AMESBURY in the coverage of governmental meetings and generally, in all ways needed to fulfill the purposes and intentions of the Cable Licenses, and in carrying out the purpose and intent of this Access Agreement. Failure to cooperate with AMESBURY will be considered a material breach of this Access Agreement.

Section 7: Logs

ACTV, shall keep a log of all PEG Access Programming transmitted on the PEG Access Channel(s) and the names and addresses of all access producers. The logs will be available for public inspection and retained for not less than two years.

Section 8: Insurance

ACTV shall be responsible to AMESBURY or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees, or agents in the performance of, or as a result of, the work under this Access Agreement. ACTV and any subcontractors used hereby certify that they are insured for workers' compensation, commercial general liability-bodily injury, property damage, personal and product liability and completed operations. The contractor, and any subcontractor it uses, shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

General Liability

Coverage shall be written on an Occurrence basis in accordance with services performed and shall include, but not be limited to, Premises/Operations, Products/Completed Operations, Personnel & Advertising Injury, Medical Payments, Blanket Contractual Liability, Contractors Protective Liability and Explosion, Collapse and Underground Exposure if applicable.

There will be no endorsement removing the subcontractor exception from the “your work” exclusion. Completed Operations coverage shall be maintained for a minimum of one (1) year post completion of the job with limits indicated below. There will be no restrictions or limitations to the additional insurance coverage for completed operations.

Limits:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate (Aggregate Limits shall be on a per project basis)

Workers Compensation

Statutory limits and coverages in accordance with services in which the work is being performed (Both employees and any leased employees). Coverage shall extend to the states in which the employee is hired, resides and in which the project is located, and shall include all State and Federal requirements.

Employer’s Liability Limits:

\$500,000 Each Accident

\$500,000 Disease-Policy Limit

\$500,000 Disease- Each Employee

Automobile Liability

Owned, Non-Owned and Hired Automobile coverages to be included.

Limits:

\$1,000,000 combined single limit per accident

Producers Liability

\$1,000,000 per occurrence

\$2,000,000 aggregate

Cyber Liability

\$1,000,000 per occurrence

\$2,000,000 aggregate

Umbrella Liability Insurance

Coverage shall be excess to and not more restrictive than all underlying Liability policies.

\$1,000,000 Limit per occurrence and aggregate on an Umbrella form over General Liability, Automobile, Pollution, Cyber and Employer's Liability.

- Prior to commencement of any work under this Agreement, ACTV shall provide AMESBURY with Certificates of Insurance which include AMESBURY as an additional named insured on all policies, except Workers' Compensation and Professional Liability Insurance, are from insurance companies that are financially rated A-; VII or better by A.M. Best and are licensed to do business in the Commonwealth, and which include a thirty (30) day notice of cancellation to AMESBURY.
- Waiver of Subrogation shall apply to all policies in favor of AMESBURY.
- All Liability policies (General Liability, Auto Liability and Umbrella Liability, Pollution Liability and Cyber Liability) shall be primary and noncontributory for Named and Additional Insures. The additional insured endorsement will include completed operations coverage with no limitations or restrictions.
- The provisions of this section shall survive the expiration or termination of this Agreement.

Section 9. Indemnification

(a) Indemnification of AMESBURY by ACTV:

ACTV shall defend, indemnify and hold harmless AMESBURY, its officials, boards, commissions, agents and/or employees and Licensee, and their officers, employees, servants and agents, from and against any claims, without limitation, arising from ACTV's activities under this Access Agreement, whether expressly authorized by such Agreement or otherwise, including but not limited to claims in the nature of libel, slander, copyright infringement, infliction of emotional distress, and invasion of privacy or publicity rights, non-compliance with applicable laws, license fees and reasonable attorney's fees. In addition, ACTV shall, in its rules for public access, require every access user to indemnify Licensee, ACTV and AMESBURY, and to defend, indemnify and hold them harmless against any claims arising out of any program or program material produced and/or cablecast by it, including but not limited to claims in the nature of libel, slander, invasion of privacy or publicity rights, non-compliance with applicable laws, license fees, unauthorized use of copyrighted material, and infliction of emotional

distress including reasonable attorney's fees. The provisions of this paragraph shall survive the expiration or termination of this Access Agreement.

(b) Indemnification by ACTV Employees:

ACTV shall, at its sole cost and expense, defend, indemnify and hold harmless its officers, employees, boards, commissions, agents and/or members from and against all claims for damage due to the actions of ACTV, its officers, employees, boards, commissions, agents and/or members, when acting in official capacity or on behalf of ACTV, where such claims arise out of the operation of ACTV or the PEG Access Facility, or the provision of PEG Access Programming which is the subject matter of this Access Agreement. Indemnified costs shall include, without limitation, all out-of-pocket expenses, including reasonable attorney's fees and the reasonable value of any services rendered by counsel.

Section 10: Annual Operating Budget and Annual Capital Funding Request

ACTV will, by or before February 1st of each year, submit to the Mayor a proposed Annual Operating Budget for the upcoming fiscal year to identify its annual operating costs and cable-related needs which it proposes to be funded by the annual PEG Access Operating Support grant provided in Article IX, s. 2 of this Agreement. In addition, ACTV will submit on or before February 1st of each year an Annual Capital Funding request to identify its capital and equipment and facilities needs for the upcoming fiscal year, which it proposes to be funded by the Equipment/Facilities grant provided by Article IX s. 3 of this Agreement.

Section 11: Annual Reporting and Audit

ACTV shall provide an annual review, report or audit of its finances and operations, as may be required by the regulations of the Attorney General, to its members, if any, to the Mayor of AMESBURY, and to both Licensees, ninety (90) days subsequent to the close of ACTV's fiscal year, or at such other time as may be agreed upon between the parties.

Reporting to AMESBURY shall include the following:

- a) A copy of ACTV's most recent Annual Report (Form PC) filed with the Attorney General's Office;
- b) Year-end financial statements, prepared by a licensed, independent CPA;
- c) Previous year's budget and actual expenditures detail;
- d) Budget Plan for the current year and two (2) upcoming years in a form mutually agreed upon by both parties to this Agreement;
- e) Hours of programming and cablecast by categories of public, educational, and governmental programming categories;

- f) Notable events, actions and programs;
- g) Training classes offered and attendance thereto;
- h) ACTV Policies, and Procedures, with any changes thereto from the previous year highlighted; and
- i) Any other documentation and/or items requested by AMESBURY.

AMESBURY, the Mayor of AMESBURY, or the Mayor's Designee(s), may conduct an annual review of ACTV's performance, each year upon receipt of the annual report or audit. At any such performance review all ACTV's officers, directors or employees so requested by AMESBURY, or the Mayor of AMESBURY or the Mayor's Designee(s) shall be in attendance; and they shall produce such ACTV records as may reasonably be requested by AMESBURY, the Mayor or the Mayor's Designee(s).

Section 12: Editorial Discretion

ACTV shall not sell to a third party any proprietary interest that ACTV may have in any programming without first offering both Licensees the right to purchase such interest by matching the best good faith offer tendered in writing by the third party;

All liability or license copyright fees associated with the programming produced by ACTV or placed on the access channel shall be the sole responsibility of ACTV.

Section 13: Status As Non-Profit 501(c)(3) Corporation

ACTV shall, throughout the term of this Access Agreement, maintain its status as a non-profit 501(c)(3) corporation, within the meaning of IRS statutes and regulations as they currently exist or as they may from time to time be amended, securing and maintaining all requisite legal designations, and filing all appropriate periodic statements, forms or reports as may be required from time to time by law or regulation. ACTV shall otherwise maintain compliance with all applicable laws, by-laws, and regulations of AMESBURY, the Commonwealth of Massachusetts, and the United States of America as shall be enacted or amended from time to time.

Section 14: No Amendments to By-Laws Without Notice to Mayor of AMESBURY

ACTV shall not make any substantive material amendment to its By-Laws without first presenting the same in writing to the Mayor of AMESBURY for review and comment, together with an explanation of the desired amendment and the reasons therefor. A thirty (30) day notice period following written notice to the Mayor of AMESBURY shall be observed by ACTV prior to adopting any such amendments.

Section 15: Maintenance of Records, Equipment and Property; Equipment Inventory

ACTV shall maintain accurate books, records and logs of its financial and programming activities, and it shall maintain the facilities and equipment provided to it in good repair and safekeeping. Annually, at the time of filing the Annual Report and Audit, ACTV shall provide to the Mayor of AMESBURY an inventory of said equipment and facilities together with a statement of its condition and corrective action, if any needed, taken or recommended to be taken, to maintain all items in satisfactory condition.

Section 16: Access to Records

ACTV shall allow the Mayor of AMESBURY, and/or the authorized Designees(s) or agents access to the books, records, accounts, and facilities of ACTV at such reasonable times and in such reasonable places as the same may require to ensure compliance with this Access Agreement.

Section 17: Political Activities Prohibited

Neither funds nor facilities nor equipment provided hereunder shall be used for any partisan political activity or to further the election or defeat of any particular candidate for public office. Such prohibition shall not apply to public interest forums, public presentations or the like where the facilities are made available on an equal time basis for the expression of all points of view for informational purposes.

Section 18: Reversion of Property upon Termination

Within seven (7) days of a termination of this Access Agreement, title to all property, equipment, facilities, and undisbursed funds and all other assets of ACTV which originated from AMESBURY or the two AMESBURY licenses, shall be transferred to AMESBURY, or to authorized Designee(s); and ACTV shall cooperate fully with AMESBURY and the Mayor of AMESBURY or authorized Designee(s) in carrying out a smooth and prompt transfer. At the time of such asset transfer, ACTV shall provide AMESBURY with a full accounting of all ACTV assets and liabilities, including all of the current obligations or debts of the corporation. All ACTV books, ledgers, and accounts including bank and credit card accounts and records, investment records, and any other financial or investment records shall be made available to AMESBURY upon such asset turnover. This obligation shall survive the termination of this Access Agreement.

Article VI - RENEWAL - ADDITIONAL TERMS

The Term of this Access Agreement may be extended from time to time by AMESBURY at the sole discretion of the Mayor of AMESBURY. Such additional terms may be for two years, or for any length of time which AMESBURY or the Mayor of AMESBURY may, at his or her sole discretion, decide.

Article VII - TERMINATION

This Access Agreement, and/or any subsequent Designation or extension thereof made under authority of this Access Agreement, shall terminate upon the occurrence of any of the following events:

- (a) The filing of bankruptcy of ACTV;
- (b) The expiration of, or revocation of, or any amendment to, the material provisions of either of AMESBURY's Cable Television Licenses affecting the right of any party to this Access Agreement;
- (c) The expiration of the then-current Term, or any extension of the Term, of this Access Agreement in the event that AMESBURY, in its sole discretion, has failed or has elected not to re-Designate ACTV as its Access Provider within the meaning of that term as employed in either this Access Agreement or in either of its Cable Television Licenses; or
- (d) The withdrawal of Designation by AMESBURY arising from any breach of this Access Agreement by ACTV which remains outstanding and uncured in whole or in part following the expiration of a notice and reasonable opportunity to cure deadline as more fully provided in Article VIII of this Access Agreement.

Article VIII - BREACH AND SANCTIONS

Section 1: Determination of Breach

Upon determining that a possible actionable breach of this Access Agreement may have occurred, AMESBURY shall serve written notice of such possible breach upon ACTV. Upon receipt of such written notice of possible breach, ACTV shall have sixty (60) days to respond in one of the following ways: (1) cure such breach and report cure of same to AMESBURY; (2) provide AMESBURY with proof that such breach did not occur; (3) if the breach was due to fault on the part of ACTV, but for reasons beyond its control, such breach cannot be cured within sixty (60) days, provide proof of same to AMESBURY, and a detailed timetable for correction and cure; or (4) if the breach was not due to fault on the part of ACTV and cannot be cured within sixty (60) days, provide proof of same to AMESBURY and a reasonable timetable for cure, to be submitted for approval by AMESBURY.

If, after notification and opportunity to cure as provided in this section, AMESBURY determines that a breach of this Access Agreement did occur, and that such breach was not cured or otherwise excused within the time duly specified by the procedures set forth in this section, AMESBURY may elect one or more of the following remedies: (1) withdraw its Designation of ACTV granted under Article III of this Access Agreement, and thereby terminate this Access Agreement; (2) impose Liquidated Damages as set forth in Section 2 of this Article VIII; (3) impose any other sanction as may be determined to be reasonable under the circumstances; or (4) excuse the breach for good cause shown.

Section 2: Liquidated Damages

Liquidated damages up to the amounts set forth below may be assessed against ACTV by AMESBURY upon finding a breach of this Access Agreement after notice and opportunity to cure as set forth in Section 1 of this Article VIII. Upon assessment of such damages, AMESBURY may require ACTV to pay such damages to AMESBURY within thirty (30) days of its receipt of a written demand for payment. Failure to pay such damages within thirty (30) days of receipt of a written demand shall itself constitute a breach of this Access Agreement. In the event of ongoing penalties, successive and non-cumulative written demands may be sent.

(a) For failure to maintain qualified, fully trained and competent personnel to manage and operate the Public Access Program, as required by Article V, Section 1, \$50.00 per day;

(b) For failure to provide live coverage of local meetings as required by Article V, Section 4, \$50.00 per day;

(c) For failure to maintain insurance policies required by Article V, Section 8, \$25.00 per day;

(d) For failure to prepare or produce Annual Report, Audit and/or Inventory, as required by Article V, Section 11; or for failure to maintain Access Programming Logs as required by Article V, Section 7; or for failure to grant to AMESBURY or its authorized representatives access to the books, records, accounts and facilities at such reasonable time and at such reasonable places as AMESBURY may require, as required by Article V, Section 16, \$25.00 per day;

(e) For failure to cooperate fully with AMESBURY or the Mayor of AMESBURY in carrying out the terms or purposes of this Agreement, as required by Article V, Section 6, \$50.00 per day;

(e) For any other material breach of this Access Agreement as may be found by AMESBURY, \$50.00 per day.

Liquidated Damages are a non exclusive remedy and may be used alone, or in combination with any other remedy for breach permitted under Article VIII, Section 1.

Article IX – FUNDING SUPPORT

Section 1: Transitional Operating Budget and Transitional Capital Funding Request

(a) Upon execution of this Agreement, ACTV will prepare and submit to the Mayor a Transitional Operating Budget identifying its operational expenses proposed to be funded by the grants received by AMESBURY under section 6.4(a) of the currently effective cable licenses granted to Comcast and to BREEZELINE, and covering the time period between the execution of this Agreement, and June 30, 2024. At the same time, ACTV will also prepare and submit to the Mayor a Transitional Capital Funding Request, for equipment, facilities and capital expenses proposed to be funded by the Equipment and Facilities grants received by AMESBURY under section 6.4 (b) of the currently-effective cable licenses granted to Comcast and to BREEZELINE, and covering the time period from the execution of this Agreement to June 30, 2024.

(b) Upon receipt of ACTV’s Transitional Operating Budget, as required by this Article IX s. 1 (a) above, AMESBURY will pay to ACTV seventy percent (70%) of the five percent (5%) of Gross Annual Revenue payments received under section 6.4 (a) of the currently-effective cable licenses granted to Comcast and to BREEZELINE. Upon receipt of an invoice from ACTV, the payments obligated by this section will be made no later than thirty (30) days from receipt by AMESBURY of the quarterly PEG payment from each respective licensee. Payments under this section shall cover the time period from the execution of this Agreement to June 30, 2024.

(c) Upon receipt of ACTV’s Transitional Capital Funding Request, as required by this Article IX s. 1 (a) above, AMESBURY will pay to ACTV a sum of money not to exceed Twenty-Five Thousand Dollars (\$25,000) from funding received by AMESBURY under section 6.4 (b) of the currently-effective cable television licenses granted by AMESBURY to Comcast and to BREEZELINE.

Section 2: Annual PEG Access Operational Support

(a) In support of ACTV’s annual expenses in operating AMESBURY’s Public and Governmental Access Channels, and providing that ACTV has submitted to AMESBURY its annual Operating Budget for the next fiscal year by February 1st, as required by Article V, Section 10 of this Access Agreement, AMESBURY will pay to ACTV seventy percent (70%) of the five percent (5%) of Gross Annual Revenues payments received under sections 6.4 (a) of the currently-effective cable licenses granted to Comcast and to BREEZELINE.

(b) Upon receipt of an invoice from ACTV, the payments in Section 2 (a) above will be made no later than thirty (30) days following receipt of such quarterly PEG Access support payments from each AMESBURY licensee, as provided in Section 6.4 (b) of the currently-effective cable licenses granted to Comcast and to BREEZELINE.

Section 3: Annual PEG Access Capital Funding Support

(a) Annually, and within thirty (30) days of receipt of the annual Capital Funding Request required by Article V s. 10 of this Agreement, AMESBURY will pay to ACTV a sum of money not to exceed Twenty-Five Thousand dollars (\$25,000.00) from funding received by AMESBURY under section 6.4 (b) of the currently-effective cable television licenses granted by AMESBURY to Comcast and to BREEZELINE.

(b) Capital contribution funding as provided under this Section 3 (a) will be for the purpose of capital, equipment and facility expenditures, as defined by standard accounting practices, and shall not be applied to fund the annual operating expenses of ACTV.

Article X -CABLE ADVISORY COMMITTEE

The Mayor of AMESBURY may appoint a Cable Advisory Committee and define its duties within the full scope of Issuing Authority powers under 207 CMR §3.01(3).

Article XI -ACCESS CORPORATION ORGANIZATION

Section 1: Board of Directors

ACTV shall have a Board of Directors composed as provided by Article 4 Section 2 of ACTV By-Laws as they currently exist or as they may from time to time be amended.

The Board of Directors shall have all of the usual overall policy setting and oversight powers customary for a corporate Board of Directors provided by law and by its By-Laws.

Section 2: ACTV Officers

The selection, duties and terms of the corporate Officers shall be as provided by the By-Laws.

Section 3: ACTV Members

The Board of Directors may establish membership in ACTV under such terms and conditions as it may deem necessary or desirable to promote public participation in, and funding of, ACTV , and consistent always with the provisions of Article 3 Section 1 of ACTV's By-Laws as they currently exist or as they may from time to time be amended.

Section 4: ACTV By-Laws

ACTV's By-Laws, as adopted by the incorporators at the time of incorporation, shall serve as the effective By-Laws of ACTV. They may be amended from time to time always consistent with the procedures set forth by Article 14 of the By-Laws, and of the procedure established by Article V, Section 14 of this Access Agreement.

Article XII – MISCELLANEOUS

Section 1: Assignment and Successors Bound

This Access Agreement shall inure to the benefit of AMESBURY and to its successors and assigns. No assignment of any legal right or obligation arising under this Agreement may be made by ACTV without the express written consent of AMESBURY.

Section 3: Waiver and Amendment

Nothing in this Access Agreement shall prevent any party from agreeing to waive any provisions of this Agreement by mutual consent. Any such waiver must be confirmed by all parties and executed in writing. No amendment shall be made to this Access Agreement unless executed in full in the same form as the original Agreement. No waivers or amendments agreed, in writing, upon pursuant to this section shall prejudice any remaining provisions of this Access Agreement and all such remaining provisions shall at all times remain in full force and effect.

Section 4: Construction

The headings herein are for reference and convenience only and shall not be a factor in the interpretation of this Access Agreement. This Access Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts.

Section 5: Severability

If any section, sentence, paragraph, term or provision of this Access Agreement is determined to be illegal or unenforceable by any court, such determination shall have no effect upon the validity of all remaining sections of the Agreement which shall remain in full force and effect for the full term of this Agreement.

Section 6: Force Majeure

If by any reason of Force Majeure any party is unable in whole or in part to carry out its obligations under this Access Agreement, that party shall not be deemed to be in breach or default during the pendency of such inability. The term “Force Majeure”, as used in this Access Agreement shall have the following meanings: Act of God; act of public enemy; orders of any kind from the government of the United States of America or of any of its departments, subdivisions, officials, or of any civil or military authorities; insurrections; riot; epidemic; landslide; lightning; earthquake; fires; hurricanes, volcanic activity; storms; floods; wash outs; droughts; civil disturbances; explosions; strikes; acts of terrorism; and unavailability of essential equipment, services, or material beyond the control of any party.

Section 7: Entire Agreement

This Access Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed

orally but only by an instrument in writing executed by the parties and in the same form as this Agreement.

Section 8: Independent Contractor

It is understood and agreed that ACTV is an independent contractor, and that no relationship of principal/agent or employer/employee exists between AMESBURY and ACTV. If in the performance of this Agreement any third persons are employed by ACTV, such persons shall be exclusively and entirely under the control, direction and supervision of ACTV. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring and discharge shall be determined by, and shall be the sole responsibility of ACTV, and AMESBURY shall have no right or authority over, or any obligation to any such persons.

Section 9: Funding from Other Sources

Nothing in this Agreement shall prohibit ACTV from obtaining funding from other sources in any lawful manner, including but not limited to fundraising can and sponsorship activities, always consistent with ACTV's status as a non-profit 501(c)(3) corporation.

Section 10: Non-Waiver

Failure of either party to insist on strict performance of any portion of this Agreement or to exercise its rights or remedies hereunder upon failure of performance or default of the other party, shall not be considered a waiver of the right to insist upon or to enforce any provision of this Agreement or to enforce any right or remedy occurring as a result of any future failure of performance or default.

Section 11: Governing Law; Jurisdiction and Venue

This Agreement is considered a Massachusetts Agreement and is subject at all times to interpretation and enforcement under the laws of the Commonwealth of Massachusetts. Jurisdiction and Venue of any legal or equitable action arising from this Agreement shall be in Essex County Superior Court. If no subject matter jurisdiction exists in Superior Court, the legal action shall be brought in Essex County District Court. The parties to this Access Agreement subject themselves to the personal jurisdiction of the said courts for all purposes, including the entry of judgment and for the resolution of any dispute, action or suit.

Section 12: PEG Access Studio

The studio shall continue to be in the AMESBURY High School in room 140. ACTV may use and have access to the studio at any time while the High School is open to the public and/or school staff, and during a reasonable time before and after public meetings in AMESBURY. ACTV may also use and have access to the control room at other times subject to the approval of the Superintendent of AMESBURY Public Schools.

If ACTV desires to establish, operate and maintain a PEG Access studio or facility at another location on AMESBURY property, the financial and other arrangements shall be subject to a mutually agreeable written agreement between ACTV and AMESBURY.

Section 13: PEG Access Programming

In programming the PEG Access channels, ACTV will comply with all federal and state laws and regulations at all times during the term of this Agreement.

Section 14: Assignment

ACTV shall have no right whatsoever to transfer, assign, sublet or lease its rights regarding the PEG Access studio, the annual funding and/or PEG Access equipment, or any other rights it may have under this Agreement without the express written consent of AMESBURY.

Section 15: Notice

Any notice delivered hereunder shall be valid if hand delivered or mailed, postage pre-paid first class to:

AMESBURY:

City of AMESBURY
Attn: Mayor of Amesbury
62 Friend Street
Amesbury MA 01913

ACTV:

Amesbury Community Television
Attn: Executive Director
5 Highland Street
Amesbury, MA 01913

Article XIII - EXECUTION

***City OF AMESBURY, MASSACHUSETTS,
By its Mayor,***

By: _____
Hon. Kassandra Gove

Dated: _____

***AMESBURY COMMUNITY TELEVISION, Inc.,
By its President,***

By: _____
Donald Meskie

Dated: _____

#899905/00701/0026

**AGREEMENT BY AND BETWEEN THE
TOWN OF AMESBURY
AND
AMESBURY COMMUNITY TELEVISION**

This agreement is made this 10th day of October, 2010 by and between the City known as the Town of Amesbury, Massachusetts (hereinafter referred to as "Amesbury" or "city") and the Board of Directors of Amesbury Community Television (hereinafter referred to as "ACT"), a non-profit, tax-exempt corporation duly established under the law of the Commonwealth of Massachusetts.

WHEREAS, the Town of Amesbury has granted a Cable Television License (the "Comcast Renewal License") to Comcast Corporation ("Comcast") on October 6, 2010; and

WHEREAS, the Town of Amesbury have negotiated certain benefits in the Comcast Renewal License for, among other purposes, public educational and governmental ("PEG") programming to be produced and cablecast in the city; and

WHEREAS, the Town of Amesbury and the Board of Directors of ACT wish to reach agreement on ACT producing and cable casting PEG programming in Amesbury;

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

1. DEFINITIONS

For the purpose of this Agreement, the following words, terms, phrases and their derivations shall have the meanings given herein, unless 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.

Access: the right or ability of any Amesbury resident and/or any Persons affiliated with Amesbury institution to use designated facilities, equipment and/or channels of the Cable Television System, subject to the conditions and procedures established for such use.

Access Channel: a video channel which the Licensee(s) shall make available, without charge, for the purpose of transmitting programming by members of the public, city departments and agencies, public schools, educational, institutional and similar organizations.

Access Corporation: the entity, designated by the city for the purpose of operating and managing the use of PEG access funding, equipment and channels on the Amesbury Cable Television System.

Cable Television System or Cable System: a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Services which includes Video Programming and which is provided to multiple Subscribers in the city.;

Issuing Authority: the Mayor of the Town of Amesbury, Massachusetts.

Licensee: Comcast and/or any successor or transferee in accordance with the terms and conditions in the Comcast Renewal License.

Origination Capacity: an activated connection to an Upstream I-Net Channel, allowing User(s) to transmit a Signal(s) upstream to a designated location.

PEG: the acronym for "public, educational, and governmental," used in conjunction with Access Channels, support and facilities.

PEG Access Channels: any channel(s) made available for the presentation of PEG Access programming.

Subscriber: Any Person, firm, corporation or other entity who or which elects to subscribe to, for any purpose, a Service provided by the Licensee by means of, or in connection with, the Cable Television System.

Upstream Channel: A channel over which Signals travel from an authorized location to the Cable System head end.

2. TERM

This Agreement shall be for a term equal to the term of the Comcast Renewal License, subject to Section 3, 4, and 15 below.

3. DESIGNATION

Subject to Sections 4 and 5 below, the city hereby designates ACT as the designated PEG Access Corporation to provide PEG Access Users.

4. PERIODIC REPORTING

On an annual basis, and within thirty (30) days of filing its Annual Report (Form PC) to the Massachusetts Attorney General's Office, ACT will provide a written report to the city (the "Report to the city"), which report shall include the following:

- a. A copy of ACT's Annual Report (Form PC) filed with the Attorney General's Office;
- b. Year-end financial statements, prepared by an independent certified professional accountant;
- c. Previous year's budget and actual expenditures summaries;
- d. Upcoming year's budget;

- e. Two-year budget plan;
- f. Hours of programming and cablecast by categories of public, educational and governmental programming;
- g. Training classes offered and attendance;
- h. ACT Policies and Procedures, with changes from the previous year highlighted; and
- i. Any other documentation and/or items mutually agreed upon by the parties hereto.

Between fifteen (15) and forty-five (45) days after the city has received ACT's Report to the city, ACT shall meet with the city, or its designee(s), for the purpose of reviewing ACT's operations, budget, programming, and items contained in the Report to the city for the previous year.

ACT will provide the following information to the city on a quarterly basis:

- a. ACT's Treasurer's Reports; and
- b. Meeting minutes for all regular meetings of ACT's Board of Directors.

Within thirty (30) days of filing, ACT will provide a copy to the city of all filings to the Commonwealth of Massachusetts and federal government, including but not limited to, Change of Directors and/or Officers, instruments of restatement of articles of incorporation, dissolution, and other corporate filings.

ACT will cooperate fully and in good faith in answering questions from the city regarding reporting required under this section, and shall promptly provide access to all of its files, records and documents on request of the city.

5. ACCESS CORPORATION OBLIGATIONS

ACT will provide PEG Access programming and services to PEG Access Users, Subscribers and the city as follows:

- a. Schedule, operate and program the PEG Access Channels provide in accordance with Section 6 herein;
- b. Manage annual funding, pursuant to Section 7 herein;
- c. Purchase and/or lease equipment, with the funds and equipment allocated for such purposes in Section 8 and 9 herein;
- d. Operate and maintain a PEG Access studio in the city, for PEG Access Subscribers and other users in accordance with Section 10 herein;
- e. Conduct periodic training programs for Amesbury residents and members of Amesbury-based organizations in the skills necessary to produce PEG Access programming;
- f. Provide access to production and post-production equipment and facilities, and technical assistance to PEG Access users, in accordance with ACT Policies and Procedures;
- g. Establish rules, procedures and guidelines for the use of the PEG Access Channel;
- h. Engage in publicity, fund-raising, outreach, referral and other activities to support PEG Access;

- i. Accomplish such other tasks relative to the operation, scheduling and/or management of the PEG Access Channel, facilities and equipment as ACT may consider appropriate and necessary; and
- j. Provide coverage for all Municipal/City Council meetings, Finance Committee meetings, and a monthly Mayor's one-hour program
- k. Provide coverage for any other boards, commissions or committee meetings, upon written request of the city, dependent on the availability of equipment, facilities, and personnel.

6. PEG ACCESS CHANNELS

ACT will have the responsibility for managing, scheduling, operating and programming one (1) dedicated Downstream PEG Access Channel, on each cable system operating in the city. The channel will be designated the Government Access Channel, but such channel may be used for Educational and Public Access programming as well, if and when appropriate, ACT shall work, cooperatively with the Mayor and other municipal departments to generate programming for the Government Access Channel.

7. ANNUAL FUNDING FOR PEG ACCESS

In order to fulfill its obligation pursuant to Section 5, ACT will receive funding for annual support for PEG Access equal to 4.25% of Licensee's gross annual revenue from Licensee.

Payments to ACT shall be made on a quarterly basis, corresponding with city's agreement with the Licensee.

8. EQUIPMENT FUNDING FOR PEG ACCESS

In order to fulfill its obligations pursuant to Section 5, ACT shall receive funding, from the Licensee, in the amount of \$150,000 to be used to purchase and/or lease PEG Access equipment and facilities. Amount will be broken into separate payments and paid according to the schedule set forth in section 6.4 of the Comcast Renewal License.

9. OWNERSHIP AND CONTROL

To secure all of its obligations under this Agreement, ACT hereby grants to the city, a security interest in all of the assets and interests owned or hereafter acquired by ACT through the provisions provided in Sections 7 and 8 above, and the proceeds thereof, including but not limited to, deposit accounts and inventory, and all equipment and fixtures, that are or were acquired with funds provided by the city to perfect and enforce the city's security interest. ACT will also notify any institution with which it now or hereafter maintains any deposit account of the existence of the city's security interest in the account.

All such assets and interest shall at all times remain under the exclusive control of ACT. ACT shall have the right to determine appropriate rules, procedures guidelines for the use of said equipment and to amend such rules, procedures and guidelines from time to time; provided however that ACT shall provide the city with a copy of such rules, procedures and guidelines and any amendments thereto. In

the event of dissolution of ACT, all of such assets and interests shall become the property of the city and/or its designee.

10. PEG ACCESS STUDIO

The initial PEG Access Studio shall be in the Amesbury High School in room 140. ACT may use and have access to the studio at any time while the High School is open to the public and/or school staff, and during and for a reasonable time before and after public meetings in the city. ACT may also use and have access to the control room at other times subject to the approval of Superintendent of Amesbury Public Schools.

If ACT desires to establish, operate and maintain a PEG Access Studio or facility at another location on the city property, the financial and other arrangements shall be subject to mutual written agreement between the city and ACT.

11. PEG ACCESS PROGRAMMING

In programming the PEG Access Channels, ACT will comply with all federal and state laws and regulations at all times during the term of this Agreement.

12. INDEMINIFICATION

ACT will, on behalf of itself, its Directors, Officers, agents and volunteers, at its sole cost and expense (and in its rules for PEG Access use, require every PEG Access user to), indemnify and hold harmless the city, its officials, boards and employees against any and all claims arising out of any use of the PEG Access studio and/or due to any programming cablecast over the PEG Access Channels including, but not limited to, libel, slander, invasion of privacy or publicity rights, non-compliance with applicable rules, regulations and/or laws and/or authorized use of copyrighted material(s).

13. INSURANCE

ACT will carry insurance indemnifying the city and itself from and against all claims for injury or damage to persons or property caused by the use of the PEG Access studio and/or any PEG Access equipment, and shall name the city as an additional insured party. Such insurance shall not be less than indicated in Attachment A included herein.

All insurance will be with responsible companies qualified to do business in Massachusetts. It is also understood and agreed that upon issuance of such insurance policy, a complete certified copy shall be given to the city for its review and records. No insurance certificates shall be cancelled by ACT without a minimum of thirty (30) days prior to written notice to the city.

ACT shall insure all PEG Access equipment from theft, loss and damage.

14. ASSIGNMENT

ACT shall have no right whatsoever to, transfer, assign, sublet or lease its rights regarding the PEG Access studio, the annual funding and/or PEG Access equipment under this Agreement without the advance, express, written consent of the city.

15. TERMINATION/DISSOLUTION OF THE ACCESS CORPORATION

The city may terminate this Agreement for material breach of this Agreement, by ACT; provided however that the city give ACT:

- a. Advance, written notice specifying in reasonable detail, such breach; and
- b. Sixty (60) days from the date of such written notice to cure any such breach.

The results of such termination by the city will be that ACT shall no longer be the designated Access Corporation.

The city may terminate this Agreement in the event that the Access Corporation engages in malfeasance, misfeasance or misappropriation or misuse of funds, or ACT fails to obtain or loses, once attained, its federal 501(c)(3) status, or ACT fails to maintain a status of Corporation in Good Standing with the Commonwealth of Massachusetts or the U.S. Internal Revenue Services.

In the event ACT is dissolved during the term of this Agreement, and/or the city terminates this Agreement with ACT pursuant to Section 15, the city shall have the absolute right to designate another entity to provide PEG Access Programming in the city. Any such successor PEG Access organization will then assume all of the benefits and obligations contained herein and in Article 6 of the Renewal License, and all then-existing equipment owned by ACT and/or the city having been purchased with funds provided pursuant to the Renewal License, other licenses and/or this Agreement, shall become the property of the city and/or transferred to such successor organization, as directed by the city in writing.

16. NONDISCRIMINATION

ACT will not discriminate against any Person in any of its PEG Access activities on the basis of race, color, creed, religion, ancestry, national origin, and geographical location within the city, sex, sexual orientation, disability, age, marital status or status with regard to public assistance. ACT will be subject to all other requirements of federal and state laws or regulations relating to nondiscrimination, throughout the term of this Agreement.

17. NOTICE

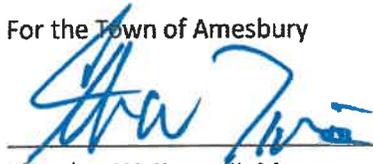
Every notice to be served upon the city will be delivered, or sent by certified mail to the Mayor, Town of Amesbury, Amesbury Town Hall, 62 Friend Street, Amesbury, Massachusetts 01913, or such other address as the Mayor may specify in writing to ACT.

Every notice to be served upon ACT will be delivered, or sent by certified mail, to the Executive Director, Amesbury Community Television, Inc., 5 Highland Street, Amesbury, Massachusetts, 01913, or such other address as ACT may specify in writing to the city.

Whenever notice of any public hearing relating to the Amesbury Cable System is required by law or regulation, the Comcast Renewal License, or upon request of the city, ACT shall identify such hearing(s) by periodic announcement on a PEG Access Channel. It shall be the city's responsibility to provide ACT any such notice.

IN WITNESS WHEREOF, the said City has caused this instrument to be executed and its corporate seal to be affixed by its Mayor as of the date and year first above written and the said Amesbury Community Television has caused this instrument to be signed by the following parties:

For the Town of Amesbury



Thatcher W. Kezer III, Mayor

For the Amesbury Community Television

