

**AGREEMENT BETWEEN THE TOWN OF SANDWICH, MA AND  
SANDWICH COMMUNITY TELEVISION, INC.**

This Agreement is made this 29<sup>th</sup> day of June, 2012 by and between the Board of Selectmen of the Town of Sandwich, Massachusetts (hereinafter referred to as the "Town" or "Sandwich") and the Board of Directors of Sandwich Community Television, Inc. (hereinafter referred to as "SCT"), a non-profit tax-exempt corporation duly established under the laws of the Commonwealth of Massachusetts.

WHEREAS, the Board of Selectmen, as statutory Board of Selectmen, granted a Cable Television Renewal License to Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, ("Comcast") on July 28, 2011; and

WHEREAS, the Board of Selectmen of the Town and the Board of Directors of SCT wish to reach agreement on SCT producing and cablecasting PEG Access programming in Sandwich.

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

## SECTION 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.

1. Access: The right or ability of any Sandwich resident and/or any Persons affiliated with a Sandwich institution to use designated Public, Education and Government ("PEG") facilities, equipment and/or PEG Access channels of the Cable Television System, subject to the conditions and procedures established for such use herein and 47 U.S.C. 531, where applicable.
2. Access Channel: A video channel which the Licensee owns and shall make available to the Town of Sandwich and/or Access Users, without charge, for the purpose of transmitting non-commercial programming by members of the public, Town departments and agencies, public schools, educational, institutional and/or similar organizations.
3. Access Corporation: The entity, designated by the Board of Selectmen of the Town of Sandwich, for the purpose of operating and managing the use of PEG Access funding, equipment, channels facilities, training and programming for Sandwich Subscribers.
4. 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 designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Town, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
5. Issuing Authority: The Board of Selectmen of the Town of Sandwich, Massachusetts.
6. Origination Capacity: An activated cable and connection to an Upstream Channel, allowing a User(s) to transmit a Signal(s) upstream to a designated location.
7. PEG: The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.
8. PEG Access Channels: Any channel(s) made available for the presentation of PEG Access programming.

9. SCT: The acronym for the Sandwich PEG Access Corporation.

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

11. Town: The Town of Sandwich, Massachusetts.

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

## **SECTION 2---TERM**

This Agreement shall be for an initial term of five (5) years from its execution, with an option to extend for a period up to an additional five (5) years upon the advance written agreement of the parties hereto, all such periods subject to Sections 3, 4 and 17 below.

## **SECTION 3---DESIGNATION**

Subject to the requirements of Sections 4 and 5 below, the Board of Selectmen hereby designates SCT as the designated PEG Access Corporation to provide services to PEG Access Users.

## **SECTION 4---PERIODIC REPORTING**

(1) On an annual basis, and within thirty (30) days of filing its Annual Report (Form PC) to the Massachusetts Attorney General's office, SCT shall provide a written report to the Board of Selectmen (the "Report to the BOS"), which report shall include the following:

- (a) A copy of SCT's most recent Annual Report (Form PC) filed with the Attorney General's Office;
- (b) Year end financial statements, audited by an independent CPA;
- (c) Previous year's budget and actual expenditures summaries;
- (d) Upcoming year's budget;
- (e) Three Year Budget Plan;
- (f) Hours of programming and cablecast by categories of public, educational and governmental programming categories;
- (g) Notable Events, Actions and Programs;
- (h) Training classes offered and attendance thereto;
- (i) SCT Policies and Procedures, with any changes thereto from the previous year highlighted; and
- (j) Any other documentation and/or items mutually agreed upon by the parties hereto.

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

(3) SCT shall provide the following information to the Board of Selectmen on a quarterly basis:

(a) SCT Treasurer's Reports; and

(b) Meeting minutes for all regular meetings of SCT's Board of Directors.

(4) Within thirty (30) days of filing, SCT shall provide a copy to the Board of Selectmen of all filings to the State and federal government, including, but not limited to, Change of Directors and/or Officers; instruments of restatement of articles of incorporation; by-laws; dissolution; and any other corporate filings.

(5) SCT shall cooperate fully and in good faith in answering questions from the Board of Selectmen regarding reporting required under this section.

#### **SECTION 5---ANNUAL HEARINGS**

(1) On an annual basis, and at least thirty (30) days after the Board of Selectmen has received SCT's Annual Report, subject to Section 4 above, SCT shall meet with the Board of Selectmen for the purpose of reviewing SCT's operations, budget and programming for the previous year.

(2) SCT shall provide such information as is reasonably requested by the Board of Selectmen and will agree to meet with the Board of Selectmen whenever reasonably requested.

#### **SECTION 6---ACCESS CORPORATION OBLIGATIONS**

SCT shall provide PEG Access programming and services to PEG Access Users, Subscribers and the Town as follows:

1. Schedule, operate and program the PEG Access Channels provide in accordance with Section 7 below;
2. Manage annual funding, pursuant to Section 8 below;
3. Purchase and/or lease equipment, with the funds and equipment allocated for such purposes in Sections 9 and 10 below;
4. Operate and maintain a PEG Access studio in the Town for Sandwich for PEG Access Subscribers and other users in accordance with Section 11 below;
5. Conduct periodic training programs for Sandwich residents and members of Sandwich-based organizations in the skills necessary to produce PEG Access programming;

6. Provide access to production and post-production equipment and facilities, and technical assistance, to PEG Access users, in accordance with SCT Policies and Procedures;
7. Establish rules, procedures and guidelines for the use of the PEG Access Channels;
8. Engage in publicity, fund-raising, outreach, referral and other activities to support PEG Access;
9. Provide coverage for key Town meetings and elections at locations determined by the Town. This shall include all Board of Selectmen, School Committee, and Finance Committee meetings, Annual and Special Town Meetings, and local elections. All other meetings shall be covered, upon request of the Board of Selectmen, dependent on the availability of equipment, facilities, and volunteers; and
10. Accomplish such other tasks relating to the operation, scheduling and/or management of the PEG Access Channels, facilities and equipment as SCT may consider appropriate and necessary.

#### **SECTION 7---PEG ACCESS CHANNELS**

(1) SCT shall have the responsibility for managing, scheduling, operating and programming four (4) dedicated Downstream PEG Access Channels as follows:

- i. One Downstream PEG also Access Channel shall be designated the Public Access Channel, but such Channel may be used for Educational and Governmental Access programming, if and when appropriate.
- ii. One Downstream PEG Access Channel shall be designated the Educational Access Channel. SCT shall work cooperatively with the Sandwich School Department and all other educational institutions in Sandwich to generate programming for the Educational Access Channel.
- iii. One Downstream PEG Access Channel shall be designated the Government Access Channel. SCT shall work cooperatively with the Board of Selectmen and other Town departments to generate programming for the Government Access Channel.
- iv. One Downstream PEG Access Channel shall be designated the Cape Cod Regional Channel but such Channel may also be used for PEG Access programming, if and when appropriate.

(2) SCT shall broadcast a current weekly programming schedule for each of its PEG Access Channels.

#### **SECTION 8---ANNUAL FUNDING FOR PEG ACCESS**

(1) The Board of Selectmen, as Issuing Authority, will receive 4.5% of Comcast's Gross Annual Revenues each year from Comcast for PEG Access/Cable-Related Funding. That funding will be distributed as follows:

- (i) In order to fulfill its obligations pursuant to Section 6 supra, SCT shall receive funding through the Board of Selectmen for annual support for PEG Access purposes equal to four percent (4%) of Comcast's Gross Annual Revenues in Sandwich.
- (ii) The Town will utilize one-half of one percent (.5%) of Comcast's Gross Annual Revenues for PEG Access/Cable-related purposes.

(2) The payments to SCT from the Board of Selectmen specified in paragraph (1)(i) above shall be made on a quarterly basis within thirty (30) days of the Board of Selectmen receiving a written request from SCT for such funding.

### **SECTION 9---EQUIPMENT FUNDING FOR PEG ACCESS**

(1) The Town will receive the sum of \$29,255.00 each year from Comcast for PEG Access Equipment/Facilities Funding. That funding will be distributed as follows:

- (a) In Year One of this Agreement, \$29,255.00 of capital funding will be used by the Town for specific upgrades to the Town Hall Auditorium including, but not limited to, a motorized projection screen, a mounted projector, wireless microphones, audio monitors, etc. The purchase, maintenance, operation and replacement of said equipment will be solely the responsibility of the Town.
- (b) In Years Two through Ten of this Agreement, the Board of Selectmen will provide the entire equipment funding of \$29,255.00 to SCT within thirty (30) days of the Board of Selectmen receiving a written request from SCT for such funding. In any of said years, the Board of Selectmen may request SCT to purchase additional PEG Access equipment consistent with the purposes of Cable Access. The request, in writing, shall be discussed and responded to in a timely manner, in writing, by SCT.

### **SECTION 10---OWNERSHIP AND CONTROL**

(a) To secure all of its obligations under this Agreement, SCT hereby grants to the Town, a security interest in all of the assets and interests owned or hereafter acquired by SCT through the provisions provided in Sections 8 and 9 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 Town. SCT agrees to take all steps reasonably requested by the Board of Selectmen to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Massachusetts Uniform Commercial Code. SCT shall also notify any institution with which it now or hereafter maintains any deposit account of the existence of the Town's security interest in the account.

(b) All such assets and interests shall at times remain under the exclusive control of SCT. SCT 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 SCT shall provide the Board of Selectmen with a copy of such rules, procedures and guidelines and any amendments thereto. In the event of dissolution of SCT, all of such

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assets and interests referenced in paragraph (a) above shall become the property of the Town and/or its designee(s).

(c) Upon the written request of SCT, and if judged to be reasonable and appropriate by the Board of Selectmen, the Board of Selectmen may agree to subordinate the Town's interest to finance the purchase of equipment or property. Such subordination shall only be with respect to the specific equipment or property that SCT might wish to finance.

### **SECTION 11---PEG ACCESS PROGRAMMING**

In programming the PEG Access Channels, SCT shall comply with all federal and State laws and regulations at all times during the term of this Agreement.

### **SECTION 13---SCT BOARD OF DIRECTORS**

The Board of Selectmen and School Committee shall have the right to appoint and designate, at their sole discretion, one (1) person from each board to serve on SCT's Board of Directors throughout the term of this Agreement.

### **SECTION 14---INDEMNIFICATION**

SCT shall, 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 Board of Selectmen, the Town, 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 or privacy or publicity rights, non-compliance with applicable rules, regulations and/or laws and/or authorized use of copyrighted material(s).

### **SECTION 15---INSURANCE**

- (a) SCT shall carry insurance indemnifying the Board of Selectmen, the Town 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 Town as an additional insured party. Such insurance shall not be less than One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person or property damage resulting from any one occurrence and Three Million Dollars (\$3,000,000.00) for such coverage in the aggregate.
- (b) All insurance shall 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 Town for its review and records. No insurance certificates shall be cancelled without a minimum of thirty (30) days prior written notice to the Town.

(c) SCT shall insure all PEG Access equipment for theft, loss and damage.

### **SECTION 16---ASSIGNMENT**

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

### **SECTION 17---TERMINATION/DISSOLUTION OF THE ACCESS CORPORATION**

(a) The Board of Selectmen may terminate this Agreement for material breach of this Agreement by SCT; provided, however, that the Board of Selectmen shall give SCT (i) advance, written notice specifying, in reasonable detail, such breach and (ii) sixty (60) days from the date of such written notice to cure any such breach. The result of such termination by the Board of Selectmen shall be that SCT shall no longer be the designated Access Corporation.

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

(c) In the event that SCT is dissolved during the term of this Agreement, and/or the Board of Selectmen terminates this Agreement with SCT pursuant to paragraph (a) and/or (b) above, the Board of Selectmen shall have the absolute right to designate another entity, including the Town itself, to provide PEG Access Programming in the Town. Any such successor PEG Access organization shall then assume all of the benefits and obligations contained herein, and all then-existing deposit accounts, inventory and equipment of any kind or manner owned by SCT and/or the Town having been purchased with funds provided pursuant to this Agreement, shall become the property of the Town and/or transferred to such successor organization, as directed by the Board of Selectmen in writing.

### **SECTION 18---NONDISCRIMINATION**

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

### **SECTION 19---NOTICE**

(a) Every notice to be served upon the Town shall be delivered, or sent by certified mail, to the Board of Selectmen, Town of Sandwich, Sandwich Town Hall, 130 Main Street, Sandwich,



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Massachusetts 02563, or such other address as the Board of Selectmen may specify in writing to SCT.

(b) Every notice to be served upon SCT shall be delivered, or sent by certified mail, to the Executive Director of SCT at such address as SCT may specify in writing to the Town.

(c) Whenever notice of any public hearing relating to the Sandwich Cable System is required by law, regulation, the Comcast Renewal License, or upon request of the Board of Selectmen, SCT shall identify such hearing(s) by periodic announcement on a PEG Access Channel. It shall be the Town's responsibility to provide SCT any such notice in a timely manner.

**SECTION 20---SEPARABILITY**

If any section, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction 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, all of which shall remain in full force and effect for the term of this Agreement.

**SECTION 21---ENTIRE AND COMPLETE AGREEMENT**

This Agreement constitutes the entire and complete Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings, including the prior agreement between the Board of Selectmen and SCT, dated September 28, 2000. This Agreement can be amended only by a written agreement between the parties.

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**SIGNATURE PAGE**

In Witness Whereof, this Agreement is hereby agreed to by the Board of Selectmen of the Town of Sandwich and the Board of Directors of Sandwich Community Television, Inc. and the parties have hereunto set their hands this \_\_\_<sup>th</sup> day of June, 2012.

**The Town of Sandwich, MA**

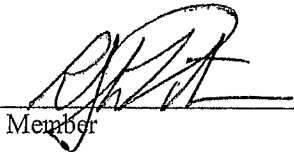
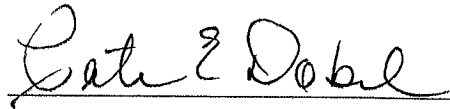
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as Board of Selectmen

**SCT**

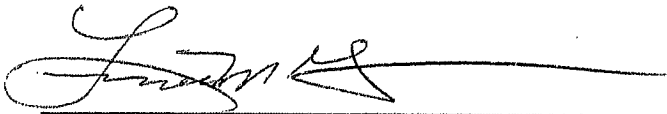
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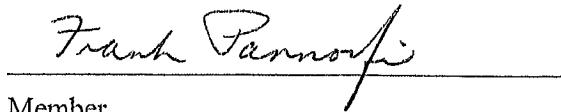
Member



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