

AGREEMENT BY AND BETWEEN THE TOWN OF FRANKLIN  
AND FRANKLIN COMMUNITY CABLE ACCESS, INC.

This Agreement is made this Twenty-Ninth day of February, 2012, by and between the Town of Franklin, Massachusetts, a municipal corporation, acting through its Town Administrator, as ratified by the Town Council (hereinafter also referred to as the "Town"), and Franklin Community Cable Access, Inc. (hereinafter also referred to as "FCCA"), a nonprofit corporation duly established under the laws of the Commonwealth of Massachusetts, who agree as follows:

RECITALS

WHEREAS, the Town of Franklin granted a Final Cable Television License to Verizon New England, Inc. ("Verizon") for a term of ten (10) years, with an effective date of December 20, 2006, and further whereas the Town granted a Cable Television Renewal License to Comcast of Massachusetts II, Inc. ("Comcast") for a term of ten (10) years, with an effective date of October 6, 2010 (references to Verizon and Comcast in this Agreement shall apply to any and all transferees or successors to Verizon and Comcast, respectively). (Hereinafter said cable licenses are also collectively referred to as the "Cable Licenses");

WHEREAS, the respective Cable Licenses each provide to the Town three (3) Public, Educational and Government ("PEG") Access Channels, together with funding and support to the Town and/or its designee (i.e. an access corporation) for PEG Access operations, facilities and equipment;

WHEREAS, FCCA has stated its interest in providing PEG Access programming, operations, services, facilities, equipment and training to the Town, its residents, Franklin organizations and institutions, and persons associated with Franklin organizations and institutions;

WHEREAS, the Town, pursuant to and consistent with its authority as a municipal corporation and a cable franchising/licensing authority under applicable federal and state law, and the relevant provisions of the Cable Licenses, enters into this Agreement for the provision by FCCA of PEG Access programming, operations, services, facilities, equipment and training to the Town, its residents, Franklin organizations and institutions, and persons associated with Franklin organizations and institutions (hereinafter also referred to as "Access Users"), pursuant to the terms of this Agreement and applicable law;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is for the provision of PEG Access programming ("programming"), and PEG Access services, facilities, training, and equipment ("operations") to the Town, its residents, Franklin organizations and institutions, and persons associated with Franklin organizations and institutions

SECTION 2. TERM

(a) The Agreement shall commence on March 1, 2012 and running through February 28, 2022, unless earlier terminated as provided herein. This Agreement may be extended by a written instrument signed by the authorized representative(s) of both parties.

(b) FCCA shall give the Town written notice of its request to renew this on or before October 31, 2021. In response to a written notice of request to renew from FCCA, the Town shall, within sixty days (60) days of receipt of said notice, provide a written response to FCCA as to whether it is willing to negotiate a renewal of this Agreement. If, as evidenced by the written notices of FCCA and the Town, both parties are interested in renewing this Agreement, the parties shall negotiate to see if an agreement can be reached to renew said Agreement on terms agreeable to both parties, including the term of years of any such renewal.

SECTION 3. SCOPE OF SERVICES - PEG ACCESS PROGRAMMING,  
SERVICES, FACILITIES AND EQUIPMENT

FCCA shall provide Public, Educational and Government ("PEG") Access programming, operations, services, facilities, equipment and training to the Town of Franklin and Access Users (Franklin residents, Franklin organizations and institutions, and persons associated with Franklin organizations and institutions), consistent with the funds provided to FCCA pursuant to this Agreement and the reasonable availability of Access personnel, contractors and volunteers, in accordance with applicable law and the operation of a Section 501(c)(3) tax exempt organization. (Unless otherwise provided in writing by the Town, said

Access programming shall include Public, Educational and Government Access programming.) The services, facilities and equipment provided by FCCA shall be provided to Access Users as further described in this Agreement, including Section 4, below. All Access programming shall require a Franklin sponsor.

The Access programming, operations, services, facilities, equipment and training shall, consistent with the funds available to FCCA, include the following responsibilities and comply with the following requirements:

- (a) Schedule, operate, program, and maintain the PEG channels (the Public Channel, the Educational Access Channel and the Government Access Channel), pursuant to, and in accordance with, the respective Cable Licenses and applicable law;
- (b) Responsibly manage the funding provided pursuant to this Agreement and raised by FCCA;
- (c) Operate and maintain a PEG Access facility/studio (hereinafter referred to as a PEG Access "Studio", and purchase and/or lease equipment needed therefore with the funds provided pursuant to this Agreement and raised by FCCA (See Section 8, below.);
- (d) Conduct outreach and recruitment efforts and activities to build and increase membership and number of Access Users;
- (e) Conduct training programs in the skills necessary to produce quality PEG Access programming. Training programs shall be both regularly scheduled and by appointment, as reasonably determined by FCCA;
- (f) Provide technical assistance to Access Users, using Access Corporation staff and volunteers;
- (g) Provide access to production and post-production equipment for Access Users;
- (h) Establish rules, procedures and guidelines (including written Access User agreements, which shall be required for all Access Users) for use of the PEG Access Channels, facilities and equipment;
- (i) Effectuate and support the production and promotion of educational, cultural and informational programming; and develop FCCA local origination programming;
- (j) Cablecast all public meetings of the Franklin Town Council, the Franklin School Committee, the Franklin Planning Board and the Franklin Conservation Commission, unless otherwise specifically requested by the respective government body, and cablecast such other Town of Franklin meetings as requested by the Town, upon reasonable notice, by the respective government body, consistent with the funding provided FCCA pursuant to this Agreement and the reasonable availability of Access personnel, contractors, and/or volunteers. Reasonable notice, which does not have to be written notice, shall be deemed to be five (5) business days. If the notice of requested coverage of a government meeting is less than five (5) business days, FCCA shall reasonably attempt to comply with such request, working out any equipment and personnel scheduling to the best of its ability. Nothing contained in this subsection is intended to interfere with the rights of any person to videotape a governmental meeting of the Town of Franklin, pursuant to the Open Meeting Law;
- (k) Responsibility for the maintenance and repair of all FCCA facilities and equipment, regardless of where located;
- (l) FCCA shall upon a timely request of the Town or the School Committee provide at no cost to the Town or School Committee, one (1) "DVD" (or other appropriate media) copy of a government meeting previously cablecast by FCCA, to the extent available;
- (m) If requested by the Town, by its Town Administrator, FCCA shall provide the equipment, training and coordination necessary for the Town to update the bulletin board on the Government Access channel;
- (n) Accomplish such other tasks relating to the operation, scheduling, management and/or programming of the PEG Access Channels and/or regarding PEG Access, operations, services, facilities, equipment and training, as reasonably deemed necessary and appropriate by the Town; and
- (o) Provide for the waiver of membership dues in FCCA for reasons of reasonably documented or evidenced hardship, and provide reduced membership dues for students and senior citizens.

#### SECTION 4. PROVIDING OPEN ACCESS AND OPPORTUNITY TO ACCESS USERS

FCCA shall develop and enforce policies and procedures which promote the use of the PEG Access Channels and the production of PEG Access programming, and make membership and accompanying PEG Access operations, services, facilities, equipment and training available and accessible, in a fair manner, to any Franklin resident, organization or persons associated therewith, consistent with such time, manner, and place regulations, including safe harbor (age appropriate cablecasting time) provisions, as are appropriate to provide for and promote the use of PEG access channels, equipment and facilities.

## SECTION 5. NON-COMMERCIAL PROGRAMMING

- (a) All Public Access programming cablecast by FCCA shall be non-commercial.
- (b) Nothing in the Agreement shall prohibit FCCA from including an appropriate underwriting acknowledgment before or after a Public Access program (but not a program on the Government or Educational Access channels, or a Government or Educational Access program on the Public Access Channel), to the extent not otherwise prohibited by applicable law, this Agreement, or the terms of a Cable License.
- (c) FCCA may charge a reasonable fee for the following services:
  - (i) services customarily provided to access users by a PEG access corporation for a fee;
  - (ii) services customarily provided to third parties for a fee, including tape dubbing (i.e. the provision of videotapes/DVDs or other electronics copies of particular access programs), to the extent not otherwise prohibited by applicable law, and except where FCCA has agreed to provide such services to the Town or its designee(s) without a fee as set forth in this Agreement;
  - (iii) Sponsorship fees; and
  - (iv) Membership fee(s), subject to such waived or reduced fee provisions as required by this Agreement. (See Section 3(n), above.)

## SECTION 6. COPYRIGHT CLEARANCE

FCCA shall require Access Users to obtain, all talent and location releases as appropriate, all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, from any and all other person(s) as may be necessary to transmit its or their program material over an Access Channel in a lawful manner. Access Users shall be required to represent that such clearances and rights have been obtained by completing an Access User production agreement form to be filed with FCCA. Access Users shall, when requested, further identify themselves as responsible for all opinions, statements and other representations made during their program. FCCA shall forward all communications from viewers directly to the named producer of that program.

## SECTION 7. FUNDING AND EQUIPMENT TO THE ACCESS CORPORATION

- (a) The Town shall provide FCCA with the following operational funding:
  - (i) The Town shall, within thirty (30) days of the execution of this Access Agreement, provide a payment to FCCA in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), to be paid from PEG Access funding support payments ("PEG Access support payment(s)") paid to date by Comcast and Verizon to the Town, pursuant to Section 6.4 of the Comcast License and Section 5.4 of the Verizon License;
  - (ii) The Town shall, beginning with the first quarterly PEG Access support payment due to the Town from Comcast and Verizon after the execution of this Access Agreement, (pursuant to Section 6.4 of the Comcast License and Section 5.4 of the Verizon License) provide FCCA with all quarterly PEG Access support payments (4.8% of gross revenues) for each quarter of this Agreement, up to and including the PEG Access support payments made by Comcast and Verizon for the first quarter of 2016.) Said funding shall be provided by the Town to FCCA within thirty (30) days of receipt of such PEG Access support payment by the Town from Comcast and Verizon.

In lieu of the Town providing said funding to FCCA, the Town may, in its discretion, to the extent permitted under the subject Cable License, instruct Comcast and/or Verizon to make said PEG Access Support payments directly to FCCA. Said instructions for such direct payment, if made by the Town, may be amended or withdrawn by the Town at any time.

- (b) The Town shall provide FCCA with the following capital funding:
  - (i) The Town shall, within thirty (30) days of the execution of this Access Agreement, provide FCCA with all PEG Access capital funding provided to the Town by Verizon to date, pursuant to the Verizon Cable License - -specifically Two Hundred Fifteen Thousand Dollars (\$215,000) in PEG Access capital funding.
  - (ii) The Town shall, subject to receipt of the following capital payments from Verizon and Comcast, provide said PEG Access capital payments to FCCA, within thirty (30) days of receipt from the Cable Licensee:
    - (a) From Verizon Payment: One Hundred Thousand Dollars (\$100,000) – due from Verizon on or before December 20, 2011.
    - (b) From Comcast Payments:
      - (i) Sixty-Three Thousand Dollars (\$63,000) – due from Comcast on or before October 6, 2011;
      - (ii) Sixty-Three Thousand Dollars (\$63,000) – due from Comcast on or before October 6, 2012; and
      - (iii) Sixty-Three Thousand Dollars (\$63,000) – due from Comcast on or before October 6, 2013; and
    - (c) From Comcast Payment – to be paid by the Town in the reasonable discretion of the Town Administrator if he/she determines that such capital payment is needed by FCCA at that time, and after consideration of the relevant facts and circumstances, including whether any additional capital payments were made by the Town to FCCA pursuant to Section 7(c) below, and the status of any renewal of this Agreement, pursuant to Section 2(b) above: Sixty-Three

Thousand Dollars (\$63,000) – due from Comcast on or before October 6, 2014;

(c) In the event Comcast or Verizon fails to make a required payment to the Town in the amount called for under the terms of the applicable Cable License, then the Town shall be under no obligation to forward or otherwise pay any such related amount called for in this Agreement, including those payments specified in Section 7(a) and (b) above, to FCCA.

(d) The Town shall provide FCCA with the following PEG Access equipment: (a) the PEG Access equipment acquired by the Town from Comcast, pursuant to Section 6.6 of the Comcast License as listed in Appendix A-1 of this Agreement; and (ii) the PEG Access equipment purchased by the Town for the provision of PEG Access as listed in Appendix A-2 of this Agreement.

(e) It is anticipated that additional funding for PEG Access facilities and/or equipment may be required for build-out and equipping a PEG Access facility/studio (hereinafter referred to as a PEG Access “studio”), as further described in Section 8 below, to serve Franklin residents and organizations. One reason such additional funding may be required at that time is because of the need and interest in building-out the new PEG Access studio prior to the time such future capital payments are due pursuant to the Comcast and/or Verizon Cable Licenses. In order for the Town, by and through its Town Administrator, as ratified by the Town Council, to make a determination to provide such additional funding, from available cable funds held by the Town for PEG Access purposes, for PEG Access facilities and/or equipment, FCCA must, at that time, provide the Town Administrator with a reasonably detailed written description of the planned PEG Access studio and/or equipment, and the estimated cost thereof. FCCA shall also respond to any questions the Town may have regarding said plan(s) and, if requested by the Town, meet with Town officials and/or representatives to discuss said plan(s). While the Town anticipates the need and importance of a new PEG Access studio with up-to-date equipment, nothing herein requires that the Town must provide such funding to FCCA pursuant to this Agreement, but rather this Section 7(d) envisions and establishes a process by which the Town can make such determination based on the relevant facts and circumstances regarding the plan(s), as well as the timing of such plan(s) in relation to the term of this Agreement and the status of any renewal thereof. (The parties acknowledge and recognize that the funds obtained from the Verizon and Comcast Cable Licenses must be used for cable related purposes, as set out in the respective Cable Licenses.)

(f) FCCA shall be responsible for: (i) providing and installing PEG Access equipment, including cameras and cablecasting equipment at those Town buildings and other locations, including PEG Access origination locations, designated by the Town Administrator or his/her designee. FCCA's obligation pursuant to this Section 7(e) shall be consistent with the funds provided and available to FCCA pursuant to this Agreement. The Town Administrator shall provide FCCA with adequate advance written notice of said equipment needs and its request(s) therefore. FCCA and the Town shall cooperate with respect to reaching agreement regarding the provision and installation of any such equipment by or for FCCA. FCCA shall consult with the Town Administrator or his/her designee(s) (and, if applicable, with the Town entity responsible for the building or property) prior to purchasing and installing said equipment.

(g) FCCA shall be responsible for the maintenance, repair and replacement of its PEG Access facilities and equipment, including such facilities and equipment provided to FCCA by the Town or otherwise obtained with funds provided pursuant to this Agreement.

(h) To secure the obligations of FCCA pursuant to this Agreement, including, but not limited to its obligations pursuant to Section 10(i) and Section 16 below, FCCA hereby grants the Town a security interest in all equipment and property (real or personal) provided by the Town or purchased with funding pursuant to this Agreement. FCCA agrees to take all steps, reasonably requested in writing by the Town, to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code. The Town agrees to subordinate its interest in order to better allow FCCA to finance the purchase of property (real or personal) for PEG Access, if deemed reasonably necessary by the Town. The subordination shall only be with respect to the specific property or equipment for which FCCA seeks and obtains financing. A determination by the Town not to invoke its rights to security interests pursuant to this Section 10(h) shall not affect the obligation of FCCA to return the subject property, equipment and/or funds to the Town (or its designee) pursuant to Section 10(i) below. To further secure its obligations pursuant hereto, FCCA shall take such reasonable actions as requested by the Town with respect to any funds provided to FCCA by the Town and which have not as of that time been expended by FCCA, including, but not limited to, listing the Town as a beneficiary on any account or other instrument holding such funding.

(i) Upon the dissolution of FCCA, the termination of this Agreement, the expiration of this Agreement without a renewal agreement, the expiration of the cable license(s) by the Town with a cable operator(s) without provision for the continued funding of PEG Access thereafter, or the reasonable threat or actuality of any other event that would put the funding, property (real or personal) or equipment provided to FCCA pursuant to this Agreement or purchased by or for FCCA from funds provided pursuant to this Agreement, at risk, FCCA shall, if requested at any such time in writing by the Town, cease expending any funds or incurring legal obligations, for further capital purchases and obligations, and shall return to the Town or to one or more charitable or educational institutions or organizations selected by the Town Administrator with the ratification of the Town Council, and created and organized for nonprofit purposes similar to those of FCCA (which qualifies/qualify as tax exempt

pursuant to §501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code) all such equipment, property (real or personal) and unexpended funds.

#### SECTION 8. ACCESS FACILITY/STUDIO

(a) FCCA shall beginning on the first day of this Agreement, take responsibility for and operate the current Access facility/studio located at 13 Main Street, Suite 10A. If at such time, the Town has entered into a lease for said space with the owner of the property (the "Lessor"), in order to effectuate its responsibilities hereunder, FCCA shall either: (i) assume responsibility for the lease of said Access studio through an assignment of the lease by the Town; (ii) sublease said Studio from the Town for the same dollar amount paid by the Town in rent to the Lessor; or (iii) make the rental payments to the Lessor on behalf of the Town or reimburse the Town for the rental payments made by the Town to the Lessor. The Town Administrator shall, in his/her reasonable discretion, after good faith consultation and negotiation with FCCA, determine which of the above options shall be selected so as to relieve the Town of the cost of such rental payments, and place said responsibility on FCCA. In the event that the Town has not entered into a lease with the Lessor, FCCA shall be responsible for negotiations and any subsequent lease with the Lessor or, alternatively, proceeding ahead with the new PEG Access studio, while making such reasonable accommodations as possible, under the circumstances, for an interim studio.

(b) Going forward FCCA shall plan and work, in cooperation with the Town, through its Town Administrator or his/her designee, to review the options which may be available for FCCA to lease a municipal building or portion thereof for building-out and equipping new Access facility/studio (hereinafter also referred to as an Access "studio"). In the event FCCA and the Town conclude, going forward, that a municipal building or space is not available for the Access studio, FCCA shall review, including continued consultations with the Town, and pursue consistent herewith, the locations and options available for a reasonably convenient, cost effective and quality Access studio in the Town, consistent with the funds provided and available to FCCA pursuant to this Access Agreement and other available funding. The Access studio shall comply with all applicable statutes, bylaws and regulations.

(c) With respect to the Access studio, FCCA shall establish reasonable and regular studio hours, with the specific hours based upon the reasonable needs of Access Users, which shall include some evening hours, and as appropriate, or otherwise requested in writing by the Town, some Saturday hours. FCCA shall inform the public, through cablecast on the Public Access Channel, of the days and hours when the studio is open and available pursuant to the regular schedule and, in addition, if the studio is available to members, by arrangement upon reasonable request. FCCA shall inform the Town, in writing, of any non-temporary change in the regular hours of the Access studio. In the event of an unexpected contingency with respect to the interim PEG Access studio prior to the build-out of a new studio, the Town may, in its discretion, consider and waive a portion of the requirements set out in this Section 8(c).

(d) The Access studio shall be for the exclusive use of staff for production and training in the execution of the mission of FCCA and for Access users, consistent with the terms of this Agreement. The Access studio shall not be used for any other purpose or for the benefit of any persons other than: (i) Access Users; (ii) the Town; or (iii) persons whose specific use of the studio benefits PEG Access and FCCA, and is reasonably limited in its nature and/or duration.

#### SECTION 9. USE OF TOWN'S MUNICIPAL FIBER NETWORK FOR PEG ACCESS VIDEO RETURN

(a) The Town hereby grants FCCA the right and privilege, consistent with the general intent of the Cable Licenses, to use the Town's municipal fiber network for PEG Access video return in order that PEG Access programming transmitted by FCCA may then be obtained by Comcast and Verizon for return by said cable operators to their cable subscribers. FCCA shall, unless otherwise determined by the Town going forward, be responsible for any equipment, including so-called "end-user equipment", and the cost thereof, not otherwise provided by the Town as part of its municipal fiber network, which is required for PEG Access programming to access on and off the municipal fiber network for PEG Access video return. Nothing herein is intended to place a responsibility or cost for the obligations of Comcast or Verizon for such PEG Access return, on FCCA.

(b) The Town reserves all rights to manage and operate its municipal fiber network in a manner it deems to be in the best interest of the network and the Town.

(c) FCCA recognizes and acknowledges that certain funding provided to the Town from the Cable Licenses, and retained by the Town, has and will be used for the further construction, extension, maintenance, repair and/or replacement of the municipal fiber network.

(d) The Town reserves the right to require FCCA to enter into a separate agreement regarding the FCCA's use of the municipal fiber network if in the judgment of the Town Administrator it is necessary to do so.

#### SECTION 10. QUARTERLY REPORT (FIRST YEAR ONLY)

For one (1) year following the execution of this Agreement, FCCA shall provide a reasonably detailed quarterly written report to the Town Administrator or his designee, regarding FCCA's plans and progress with respect to its current and future PEG Access operations and programming, and compliance with this Agreement.

#### SECTION 11. ANNUAL REPORT

At least once each calendar year, FCCA shall submit to the Town Administrator a written annual report (together with an electronic copy) that shall contain, at a minimum, the following information:

- (a) A summary of programming and services provided;
- (b) List of future goals;
- (c) Current and complete listing of FCCA's Board of Directors and officers;
- (d) A description of its facilities and a complete inventory of all equipment; and
- (e) A year-end fiscal audit (or review if an audit is waived by the Town).

#### SECTION 12. UPDATE/PERFORMANCE REVIEW MEETING BETWEEN TOWN AND FCCA

(a) Once per year, when requested by the Town Administrator, FCCA shall meet with Town representative(s). The purpose of said meeting shall include reviewing FCCA's compliance with the terms and conditions of this Agreement, and hearing comments and/or suggestions from the Town regarding FCCA and/or the PEG Access program and operations.

(b) The Town shall have the right, both before, during and after the meeting, to question FCCA, either or both in writing or orally, regarding any aspect of its performance under this Agreement. FCCA shall fully cooperate with the Town, and shall produce, at FCCA's cost, such documents or other materials relevant to such review and evaluation as are reasonably requested by the Town.

(c) FCCA shall provide notice of all such performance evaluation hearings by periodic messages on the Public and Government Access channels.

(d) Nothing in this Section shall prohibit the Town from requesting that FCCA attend other meetings or hearings, or compelling the attendance by FCCA through any lawful means.

#### SECTION 13. PERFORMANCE REVIEW BY THIRD PARTY

In both the second (2nd) and fourth (4th) years of this Agreement, and once during the fourth (4) year of this Agreement, unless otherwise waived by the Town Administrator, FCCA shall, engage or retain a person or entity that is knowledgeable and experienced in PEG Access operations in the Commonwealth of Massachusetts to conduct a performance review of FCCA's operations, including, but not limited to a review of its overall PEG Access operation and program, facilities and equipment, public outreach, training program, and the general quality and amount of PEG Access programming. The cost of this performance review shall be borne by FCCA or otherwise paid for by funds raised by FCCA. Upon completion, FCCA shall submit a copy of a written performance review to the Town Administrator.

#### SECTION 14. RECORDS, REPORTS, AND EQUIPMENT INVENTORY/BUSINESS PRACTICES

(a) FCCA shall maintain all necessary books and records, in accordance with legal requirements, and generally accepted records maintenance and accounting principles. More specifically, FCCA shall:

(i) Implement effective internal financial and operating controls for the efficient use of all funds and other resources provided pursuant to this Agreement;

(ii) Maintain all necessary books and records, in accordance with generally accepted accounting principles;

(iii) Make timely payments as due to persons and entities supplying labor, materials or services to FCCA for any purpose under this Agreement; and

(iv) Maintain generally accepted business and accounting practices with respect to its operations and investments, financial oversight and management;

(b) Upon request from the Town, FCCA shall, at a reasonable time(s) during normal business hours, make available any or all of its records with respect to all matters covered by this Agreement.

(c) The Town may, at its sole cost and expense, have the right to have the financial books and records of FCCA Access reviewed by a qualified individual or firm. Nothing herein shall be deemed to diminish the responsibility of FCCA, if any, under applicable law or regulation, with respect to any financial record keeping or financial statement and/or reporting requirements. Copies of any such financial records, statements shall be provided to the Town upon request of Town or its designee(s).

(d) All capital equipment initially costing at One Thousand Dollars (\$1,000) or more owned or otherwise in the possession of FCCA shall be inventoried and labeled or otherwise marked as belonging to FCCA. The inventory shall include invoice numbers and maintenance/repair information.

#### SECTION 15. FINANCIAL AUDIT

FCCA shall have a year-end fiscal audit prepared by an independent certified public accountant. FCCA may, for any particular year, request from the Town Administrator or his/her designee, that in lieu of a fiscal audit by an independent certified public accountant, that FCCA instead be allowed to have such financial audit performed by a person who is not a certified public accountant or alternatively have a financial "report", rather than a financial "audit", as long as the requested alternative is in compliance with applicable law. Nothing herein shall limit the authority of the Town, or the responsibilities of FCCA, as otherwise provided for in this Agreement, including as set out in Section 14 above.

#### SECTION 16. INDEPENDENT CONTRACTOR

It is understood and agreed that FCCA is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and FCCA. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by FCCA, and the Town shall have no right or authority over such persons or terms of employment.

#### SECTION 17. ASSIGNMENT AND TRANSFER

Neither this Agreement, nor any interest or responsibility herein, shall be assigned or transferred by FCCA, except as expressly authorized in writing by the Town. No third party may satisfy a material obligation of FCCA under this Agreement, without the prior written approval of the the Town.

#### SECTION 18. FUNDING FROM OTHER SOURCES

Nothing in this Agreement shall prohibit FCCA from obtaining funding from other sources in a lawful manner, including, but not limited to, fundraising activities, as long as such fund raising does not violate a term of this Agreement, the non-profit status of FCCA, or applicable law.

#### SECTION 19. GOVERNANCE OF ACCESS CORPORATION

The governance of FCCA shall comply with the following requirements, which shall be reflected in its By-Laws, as applicable:

- (a) The Board of Directors shall, under ordinary circumstances, have a minimum of seven (7) directors. In no event shall the Board of Directors have greater than seven (7) directors without amending this Access Agreement.
- (b) After the selection of the initial directors by the incorporators, subsequent directors shall also include directors selected as follows: (i) two (2) Directors shall be appointed by the Town Administrator, subject to confirmation by the Town Council, and one (1) Director shall be selected by the Franklin School Committee.
- (c) All residents of the Town and one (1) person associated with any business, corporation, organization, institution, or other entity which is located in the Town of Franklin, provided however that the representative of the stated entities shall also be a resident of Franklin, shall be eligible to be appointed or elected as a Director. A Director need not be a member of FCCA prior to their appointment to the Board of Directors, but shall become a member of the FCCA immediately after their appointment as a Director.
- (d) No Director shall be appointed or elected to serve more than three (3) consecutive three-year terms by the same appointing or electing authority.
- (e) Vacancies in the membership of the Board of Directors shall be selected in the same manner as the selection of the respective member(s) of the Board.
- (f) No member of FCCA's Board of Directors may be removed from office with less than an affirmative vote of two-thirds (2/3) vote of the full Board of Directors. (A vote of six (6) members of the Board of Directors.)
- (g) The Board of Directors shall hold a minimum of four (4) regular directors meetings each year.
- (h) Directors and officers of FCCA shall receive no compensation for their services provided as Directors or officers, however, a Director or officer may be reimbursed for reasonable and necessary expenses incurred. A Director or officer shall not be precluded from serving the Corporation in any other capacity, however no Director or officer shall be eligible to be compensated for any services, although they may be reimbursed for reasonable and necessary expenses incurred.
- (i) Meetings of the membership of FCCA and its Board of Directors shall be open to the public except in those instances where the membership or Board, in good faith, deems closure of all or some of the meeting to be in the best interest of the Corporation. (FCCA is not a governmental or public body and is not subject to "Open Meeting Law").
- (j) Notice of the regular and special meetings of the membership and the Board of Directors shall be cablecast on the Public Access channel.
- (k) No member of the Board of Directors or officer of FCCA may participate in or vote on any particular matter in which said Director or officer, or their immediate family member, partner, a business organization in which they are serving as an officer, director, trustee, partner or employee, or any person or organization with whom they are negotiating or has an

arrangement concerning prospective employment, has a financial interest. (FCCA is not a governmental body, nor subject to the "State Ethics Law" )

(l) Neither the Board of Directors, nor any officer, shall take any action that would result in the denial or loss of tax-exempt status under the Section 501(c)(3) or any other applicable section of the United States tax code.

(m) FCCA shall, at a minimum, have the following officers: President, Vice President, Treasurer and Clerk. The Treasurer shall be bonded in an amount consistent with his/her financial responsibilities and the funds for which the office is responsible.

(n) The Board of Directors shall hire an executive director, reporting to the Board of Directors of FCCA, who shall be responsible for the conduct of the day to day operations of FCCA in a professional manner, consistent with the standard of care of the operation of well operated, non-profit, access corporations in similarly sized Massachusetts communities. The Executive Director shall be responsible for the hiring of other staff positions, subject to a confirmation process, if any, by the Board of Directors that FCCA may reasonably choose.

#### SECTION 20. INDEMNIFICATION OF TOWN BY FCCA

FCCA shall indemnify, defend, and hold harmless the Town, its officials, employees, volunteers and agents from and against any and all claims, suits, actions, causes of action, losses, damages, or liabilities of any kind, nature or description, including, payment of all attorneys' fees and litigation costs and expenses, brought by any person, persons or entity for or on account of any claim, loss, damage or injury to person, property or any other interest, tangible or intangible, or death sustained by or accruing to any person or persons, however the same may be caused, whether directly or indirectly or arising or resulting from any alleged act(s) or omission(s) of FCCA, its officers, employees, volunteers, agents or subcontractors from or with respect to the performance of this Agreement, its PEG Access operations and/or programming, arising from or in connection with the failure to comply with any applicable laws, rules, regulations or other requirements or orders of local, state or federal authorities, for claims of libel, slander, invasion of privacy, infringement of common law or statutory copyright, or for breach of contract or other injury or damage in law or at equity arising or related thereto. This indemnification requirement shall survive the termination or expiration of this Agreement.

#### SECTION 21. INSURANCE

FCCA shall, unless otherwise directed in writing by the Town, obtain and maintain in full force and effect at all times during the term of this Agreement all insurance required below by this Section.

(a) Commercial General Liability Insurance - Commercial general liability insurance policy, including protective liability, completed operations and broad form contractual liability, property damage and personal injury coverage, with a minimum coverage limit of One Million Dollars (\$1,000,000) per person and per occurrence, Two Million Dollars (\$2,000,000) aggregate. Said policy shall also include tenant legal liability for property damage, if FCCA is a tenant of the Town, and if so requested by the Town.

(b) Motor Vehicle Liability Insurance - Automobile liability insurance for owned, leased or rented motor vehicles in the amount of One Million Dollars combined single limit.

(c) Excess/Umbrella Liability Insurance - In the minimum amount of Two Million Dollars (\$2,000,000) over the insurance required by Subparagraphs (a) and (b) above.

(d) Business Personal Property Insurance - Business personal property insurance at for facilities and equipment in the amount of replacement cost.

(e) Workers' Compensation - Workers Compensation in the minimum amount of the statutory limit when FCCA has an employee(s).

(f) Cablecaster's Errors and Omissions Insurance – errors and omissions insurance to cover the content of productions which are cablecast on an Access Channel to include, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual Access producers. The minimum amount of said insurance shall be One Million Dollars (\$1,000,000).

(g) The following conditions shall apply to the insurance policies referenced above:

(i) The Town shall be a Certificate Holder for said insurance policies, and the policies shall provide that no cancellation, material change in coverage or expiration may be affected by the insurance company or FCCA without first giving the Town thirty (30) days written notice prior to the effective date of such cancellation or change in coverage;

(ii) The Town shall be named as an additional insured on all aforementioned insurance coverages, including all liability insurance coverage (but not including the workers' compensation policy or cablecaster's errors and omission insurance) to the extent allowed by law.

(iii) Such insurance shall be primary with respect to any insurance or self-insurance maintained by the Town and shall not call on the Town's insurance for contributions;



(iv) Such insurance shall be obtained from producers authorized to transact insurance business in the Commonwealth of Massachusetts and, unless otherwise agreed to in writing by the Town, shall be provided by an insurance carrier(s) licensed to do business for the coverage provided in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance;

(v) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein and follow the same form;

(vi) The cost of such insurance, including all premiums and deductibles, shall be borne by FCCA;

(vii) The parties shall periodically review the insurance coverage and minimum coverage amounts, required above, to determine whether said insurance adequately protects the parties and/or is cost effective. The Town reserves the right to increase any minimum insurance coverage requirements referenced above, if circumstances and/or risks warrant, however such minimum coverage requirements will not be increased: (a) without consultation with FCCA; (b) if such increased insurance coverage amount(s) is commercially unavailable or if FCCA cannot obtain said increased coverage amounts at a cost deemed reasonable by the Town; and (c) without at minimum of ninety (90) days written notice of such increase. The Town also reserves the right to decrease any minimum insurance coverage requirement(s), if such decrease is in the interest of the Town under the totality of circumstances.

(viii) The failure of FCCA to maintain the insurance required herein shall be grounds for the Town to suspend this Agreement immediately, without resort to the termination procedures provided in Section 20 below; and

(h) Directors' and Officers' Liability Insurance - FCCA shall obtain directors' and officers' liability insurance for its directors and officers.

#### SECTION 22. TERMINATION OF AGREEMENT - TRANSFER OF ASSETS

(a) The Town, through its Town Administrator, subject to ratification by the Town Council, shall have the right upon five (5) business days written notice to FCCA to terminate this Agreement for:

(i) Malfeasance, misfeasance, misappropriation or waste of substantial funds provided pursuant to this Agreement;

(ii) Loss of 501(c)(3) status by FCCA;

(iii) FCCA filing a petition of bankruptcy, or for receivership or reorganization, has filed any other petition under the bankruptcy law, or has taken or committed an act preparatory to the filing of any such petition, has become insolvent or has committed any other act of bankruptcy or insolvency, or has a substantial portion of its assets assessed for the benefit of creditors;

(iv) The loss of a substantial portion of PEG Access funding as a result of a change in the financial terms of a cable license, a change in the status of a cable service provider or a change in law; or

(v) For any other material breach of a material provision of this Agreement by FCCA. FCCA may avoid termination based on such other material breach, by curing said breach within thirty (30) days of written notification or such longer times as the Town Administrator determines. Upon a third (3rd) such material breach by FCCA over the course of a twenty-four (24) month period, the Town may terminate the Agreement upon written notice and without any cure period

(c) All written notices of termination shall include a reasonably detailed description of the alleged breach.

(d) See Section 21(g)(viii) for immediate suspension as a result of FCCA's failure to maintain the required insurance.

#### SECTION 23. ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties, which supersedes all prior agreement or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument, in writing executed by the parties.

#### SECTION 24. COOPERATION

Each party agrees to cooperate with the other party to carry out the provisions of this Agreement.

#### SECTION 25. CAPTIONS

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of the Agreement. Such captions shall not affect the meaning or interpretation of the Agreement.

#### SECTION 26. FORCE MAJEURE

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability, provided the party takes immediate and

diligent steps to comply as soon as possible under the circumstance with this Agreement without endangering the health or safety of the persons or property. The term "Force Majeure" as used herein be limited to, the following: acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivision, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, civil disturbances, explosions, strikes, and unavailability of essential equipment, service or materials, the unavailability of affordable insurance coverage, or other matters beyond the reasonable control of the party. In the event that any such delay in performance or failure to perform affects only part of the party's capacity to perform, the party shall perform to the maximum extent it is able to do so in as expeditious a manner as possible. The party subject to Force Majeure shall notify the other party in writing of the occurrence of an event covered by this Section 26 within five (5) business days of the date upon which the party knew or should have known of its occurrence. In the event that any delay in performance or failure to perform as a result of an above referenced force majeure event affects only part of the party's capacity to perform its obligations under this Agreement, that party shall perform to the maximum extent it is able to do so and in as expeditious manner as possible. The party invoking force majeure shall take immediate and diligent steps to comply as soon as possible under the circumstances with the terms of this Access Agreement

#### SECTION 27. 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 the 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 exercise any right or remedy occurring as a result of any future failure of performance or default.

#### SECTION 28. 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 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 the Agreement.

#### SECTION 29. APPLICABLE LAW/JURISDICTION AND VENUE

(a) This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts.  
(b) Jurisdiction and venue and venue over any dispute, action or suit ("action") arising from or related to this Agreement shall be in the Massachusetts Superior Court Department located in Dedham, and if subject matter jurisdiction does not exist in the Superior Court, the action shall be brought in the Wrentham Division of the Massachusetts District Court Department. The parties hereby subject themselves to the personal jurisdiction and venue of these courts for purposes of this Section 29 and this Access Agreement.

#### SECTION 30. NOTICE

Official notice shall be in writing, and delivered or sent by certified mail - return receipt requested or express mail - signature required. Delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of delivery. Certified mail shall be deemed to have been given two (2) days after mailing and express mail shall be deemed to have been given the day after mailing. Notice shall be addressed as provided below or such other name, title and/or address as hereinafter provided in writing by the respective party:

TOWN OF FRANKLIN  
Town Council  
Franklin Municipal Bldg  
355 East Central Street  
Franklin, Massachusetts 02038

FRANKLIN COMMUNITY TELEVISION  
President  
Franklin Community Cable Access, Inc.  
10-13 Main St.  
Franklin Massachusetts 02038

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date first written above.

TOWN OF FRANKLIN


FRANKLIN COMMUNITY CABLE ACCESS, INC

By Its Town Administrator  
Jeffrey D. Nutting

By its President, duly authorized  
Robert Dean

Approved as to legal form:  
Mark G. Cerel, 2-17-12  
Town Attorney

**TOWN OF FRANKLIN**  
Town Council  
Franklin Municipal Bldg .  
355 East Central Street  
Franklin, Massachusetts 02038

**FRANKLIN COMMUNITY TELEVISION**  
 President  
Franklin Community Cable Access, Inc.  
\_\_\_\_\_  
Franklin Massachusetts 02038

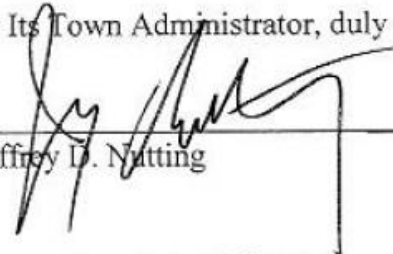
IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date first written above.

**TOWN OF FRANKLIN**

**FRANKLIN COMMUNITY  
CABLE ACCESS, INC**

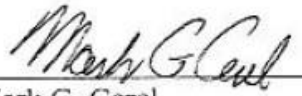
By Its Town Administrator, duly authorized

By its President, duly authorized

  
\_\_\_\_\_  
Jeffrey D. Nutting

  
\_\_\_\_\_

Approved as to legal form:

 2-17-12  
\_\_\_\_\_  
Mark G. Cerel  
Town Attorney

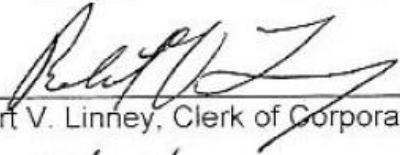
**CERTIFICATE OF CORPORATE VOTE, RE:  
AGREEMENT BETWEEN THE TOWN OF FRANKLIN AND  
FRANKLIN COMMUNITY CABLE ACCESS, INC.**

A regular meeting of the Board of Directors of Franklin Community Cable Access, Inc. hereinafter: "Corporation") was held on Wednesday, February 29, 2012 beginning at 7:00 p.m. at the Franklin Municipal Building, 355 E. Central Street, Franklin, proper notice having been given to all directors as provided in the Corporation's bylaws. Upon motion duly-made, the Board of Directors, **VOTED**:

That the Board of Directors hereby approves the terms and conditions contained in "Agreement By and Between The Town of Franklin and Franklin Community Cable Access, Inc." approved as to legal form by Mark G. Cerel, Town Attorney on February 17, 2012 and signed on behalf of Town of Franklin by its Town Administrator, duly-authorized, Jeffrey D. Nutting, and the Board authorizes the Corporation's President Robert R. Dean to execute said agreement on Corporation's behalf and to take any and all action necessary to implement said agreement.

The vote was: 5 In Favor    0 Opposed    0 Abstain    2 Absent.

ATTEST:

  
\_\_\_\_\_  
Robert V. Linney, Clerk of Corporation  
2/29/12  
\_\_\_\_\_  
Date