

AGREEMENT BETWEEN

THE TOWN OF CARLISLE, MASSACHUSETTS AND CCTV INC.

FOR

Programming, Management and Operation of PEG Access

THIS AGREEMENT made effective December 20, 2005, by and between the **TOWN OF CARLISLE, MASSACHUSETTS**, a municipal corporation, acting by and through its Board of Selectmen, with their offices at Town Hall, 66 Westford Street, Carlisle, Massachusetts 01741 (hereinafter called the "TOWN"), and **CCTV INC.** whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "CONTRACTOR").

RECITALS:

WHEREAS, the TOWN desires to retain the CONTRACTOR to provide certain services for the TOWN as described, below, and the CONTRACTOR is willing to accept such engagement, all on the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE CONTRACTOR

- 1.1 The TOWN hereby engages the CONTRACTOR, and the CONTRACTOR hereby accepts the engagement, to perform certain services for the TOWN, as described in Article 2.
- 1.2 In the performance of any service under this Agreement, the CONTRACTOR acts at all times as an independent contractor. There is no relationship of employment or agency between the TOWN, on the one hand, and the CONTRACTOR on the other, and the TOWN shall not have or exercise any control or direction over the method by which the CONTRACTOR performs its work or functions aside from such control or directions which are consistent with the independent contractor relationship contemplated in the Agreement.

ARTICLE 2 - SERVICES OF THE CONTRACTOR

- 2.1 The CONTRACTOR will perform the services described in the Scope of Services set forth on Exhibit A (the "Scope of Work").
- 2.2 The CONTRACTOR shall report, and be responsible, to the TOWN and its designee (if any) as set forth on Exhibit A.
- 2.3 There shall be no amendment to the Scope of Services or Work provided for in this Agreement without the written agreement of the parties. The TOWN shall be under no obligation to pay for

any services performed by the CONTRACTOR which are not explicitly agreed to by the TOWN in writing.

- 2.4 The CONTRACTOR represents and warrants to the TOWN that the CONTRACTOR (including all of its personnel, whether employees, agents or independent contractors) will be qualified and duly licensed (if necessary) to perform the services required by this Agreement and further agrees to perform services (either directly or through subcontractors) in a professional manner adhering to a reasonable standard of care and in accordance with all applicable local, state or federal ordinances, laws, rules and regulations. The CONTRACTOR will obtain any and all permits, bonds and other items required for the proper and legal performance of the work.
- 2.5 The CONTRACTOR represents and warrants to the TOWN that it is not a party to any agreement, contract or understanding which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.

ARTICLE 3 - PERIOD OF SERVICES

- 3.1 Unless otherwise provided on Exhibit A, the term of this Agreement shall commence on the date hereof and continue as specified in Exhibit A.
- 3.2 The CONTRACTOR shall proceed with the Work promptly after receiving authorization to proceed and will diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. In any event, the Work shall be completed not later than the date set forth on Exhibit A. The CONTRACTOR acknowledges that time is of the essence of this Agreement.
- 3.3 If the CONTRACTOR is delayed in the performance of any of its obligations under this Agreement by the occurrence of an event which may not reasonably be anticipated or avoided or is otherwise beyond its control such as fire or other casualty, abnormal adverse weather conditions, acts of God (collectively, "Unavoidable Events") which materially and adversely affect its ability to perform the Work, then the time for the CONTRACTOR to perform the Work shall be extended for such time as the TOWN shall reasonably determine is necessary to permit the CONTRACTOR to perform in light of the effects of the Unavoidable Event.

ARTICLE 4 - PAYMENTS TO THE CONTRACTOR

- 4.1 The compensation due to the CONTRACTOR shall be paid in the amounts, and in the manner, set forth on Exhibit B, attached hereto.
- 4.2 This project may be subject to budgetary restrictions which may limit the total amount of funds available for the work. Accordingly, unless otherwise stated on Exhibit B, the TOWN will not be obligated to pay any amount in excess of the maximum project amount without the express written approval of the TOWN.

ARTICLE 5 - TERMINATION

- 5.1 The Agreement shall terminate upon the adjudication of the bankruptcy of CCTV.
- 5.2 This Agreement may terminate if the Contracting Authority determines that CCTV has failed to fulfill its responsibilities pursuant to the terms and conditions herein.

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

5.3 CCTV may terminate this Agreement by a majority vote of its Board of Directors at a regular meeting where this item shall appear on the agenda, as shall be specified by the Bylaws of the Corporation.

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

5.4 All equipment and supplies purchased by the Town or CCTV with funds provided by the Licensee under the terms of the Renewal License shall be the property of the Town. Upon termination of this Agreement, equipment so purchased cannot be used to satisfy any present or future indebtedness of CCTV and is subject to continuing access by the Town, including the right of removal.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

6.1 The CONTRACTOR agrees to indemnify and save the TOWN harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by CONTRACTOR (including all its employees, agents and independent contractors) in performing the Work, or any breach of the terms of this Agreement by such CONTRACTOR and shall reimburse the TOWN for any and all costs, damages and expenses, including reasonable attorney's fees, not to exceed Carlisle PEG TV franchise revenues currently on hand, or \$5,000, whichever is greater, which the TOWN pays or becomes obligated to pay, by reason of such activities, or breach. The provisions of this Section 6.1 shall be in addition to, and shall not be construed as a limitation on, any other legal rights of the TOWN with respect to the CONTRACTOR, in connection with this Agreement.

- 6.2 Before commencing work, the CONTRACTOR shall obtain and maintain, at its expense and from insurance companies of a Best Rating of A or better which are licensed to do business in the Commonwealth of Massachusetts, insurance as set forth below.
- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits law.
 - (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.
 - (c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.
 - (d) Errors and Omissions Insurance of not less than \$1 million per claim.
 - (e) Such additional insurance as may be required to be carried by the CONTRACTOR by law.
 - (f) Such additional insurance as the TOWN may reasonably require as set forth on Exhibit A.

CONTRACTOR shall maintain such insurance during the term of Agreement and give the TOWN twenty (20) days written notice of any change or cancellation of coverage. Each insurer providing policies hereunder shall waive its rights to subrogate claims against the TOWN. The TOWN will be added as an additional named insured with respect to each such policy and such endorsement shall be reflected on an Certificate of Insurance to be delivered to the TOWN upon the execution of this Agreement and at such times thereafter as the TOWN may reasonably request.

ARTICLE 7 - GENERAL PROVISIONS

- 7.1 CCTV will maintain its status as a 501(c) (3) non-profit corporation eligible for exemption from taxes under federal and state law.
- 7.2 Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party, and any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.
- 7.3 Except as otherwise expressly provided in this Agreement, any decision or action made by the TOWN relating to this Agreement, its operation, amendment or termination, shall be made by the Board, Committee or Authority of the TOWN specified in the initial paragraph of this Agreement, unless specifically authorized or delegated by a lawful vote of such body.
- 7.4 This Agreement, together with Exhibit A (Contractor, Scope of Work, Term), Exhibit B (Payments) and Exhibit C (Tax Compliance Certificate) and any additional exhibits referred to therein, constitute the entire agreement of TOWN and CONTRACTOR with respect to the

matters set forth therein and may not be changed, amended, modified or terms waived except by a writing signed by TOWN and CONTRACTOR. If there is any conflict between a term set forth in the body of this Agreement and a term set forth on Exhibit A or Exhibit B hereto, the term set forth in the Exhibit shall govern. Any notices required or allowed shall be to the person's address above by certified mail, return receipt requested.

- 7.5 This Agreement is governed by the law of The Commonwealth of Massachusetts and shall be construed in accordance therewith.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

TOWN OF CARLISLE, MASSACHUSETTS
By and through its
Board of Selectmen

[Contractor]

Charles A. G. Stevenson
Chair

By: Clinton B. Th
President, CCTV

R. A. Allen

Walter Shutey

Joe Williams

Tom M

Approved:

Madonna McGeary
Town Administrator

Approved As To Funds Available:

Ricardo Dunder
Town Accountant

Approved as to form only:

Town Counsel

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

TOWN OF CARLISLE, MASSACHUSETTS
By and through its
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[Contractor]

Charles A. G. Stevenson
Chair

By: Conan B. ...
President, ...

R. A. Allen

Walter ...

John ...

...

Approved:

...
Town Administrator

Approved As To Funds Available:

...
Town Accountant

Approved as to form only:

...
Town Counsel

EXHIBIT A

CONTRACTOR, SCOPE OF WORK, TERM

1. **Name of Contractor:** CCTV INC.
2. **State of Incorporation:** Massachusetts
3. **Principal Office Address:** 500 Walden Street, Concord, Mass 01742
4. **Description of Services (§2.1):** See Attached Scope of Work - **ATTACHMENT A**
5. **Person, Department, or Committee, if any, to whom CONTRACTOR reports (§ 2.2):** Board of Selectmen
7. **Term of Agreement (§3.1):** This agreement is for three years to expire on November 30, 2008. (The Board of Selectmen will place a warrant before Town meeting to extend this agreement until October 13, 2011. This will allow the agreement to run concurrent with the license agreement between the Town of Carlisle and Comcast.)

EXHIBIT B

PAYMENTS

1. \$20,000 of the initial \$25,000 capital payment received from Comcast by the Town of Carlisle will be used for Town Hall cameras and controls, this may include a scan converter for better broadcast of digital presentations.

The \$5,000 balance will go to CCTV Inc. toward the upgrade of CCHS studios.

2. Current and future franchise payments from Comcast (as provided in Section 6 of the Renewal License with Comcast of Massachusetts III, Inc., with payments made April 1st of each year for the preceding calendar year) will be directed to CCTV, Inc. for the purpose of PEG TV operations/equipment.
3. The second capital payment to the Town of Carlisle from Comcast of \$15,000 in 2006, will be allocated as follows: \$7,000 for Carlisle School Department television equipment, and \$8,000 to go to the 2005 CCHS studio renovation costs.

EXHIBIT C

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

By: Constantin B. Xu

Date: 12.20.05

Federal EIN ~~04~~ 20-1861422

ATTACHMENT A

SCOPE OF WORK

CCTV, Inc. will manage the PEG Access channels, equipment and facilities on a non-discriminatory basis.

With respect to the public access channels, CCTV, Inc. will

- (a) be responsible for programming free from censorship of program content;
- (b) facilitate and promote programming including but not limited to cultural, literacy, educational and public affairs content;
- (c) make the public access facilities and channels available in a non-discriminatory manner to encourage the exchange of ideas and opinions on a broad range of topics;
- (d) assume responsibility for fund-raising to supplement Public Access programming; and
- (e) be responsible for consistent outreach to the various segments of the community to encourage use of the public access channels;
- (f) establish a satellite studio at the Carlisle Town Hall and work to establish a satellite studio at the Carlisle Public School within five years.

With respect to the Educational and Governmental Access Channels, CCTV and the Contracting Authority and the Public Schools will mutually agree on the responsibilities of CCTV, which shall include CCTV following mutually agreed upon policies and guidelines for programming the Governmental and Educational Channels established by the Contracting Authority and the Public Schools respectively.

CCTV, Inc. will provide for coverage of the regularly scheduled Carlisle Board of Selectmen meeting, at CCTV's cost if volunteers are not available, for the first year of the Agreement. On-site training in Town Hall will also be provided during this period, in order to provide Carlisle volunteers with special opportunities to learn community production skills.

In addition, CCTV, Inc. will hold workshops for the purpose of teaching television skills to individuals and community groups; manage funds designated for PEG Access television; schedule PEG Access cablecasting, manage, and maintain PEG Access facilities and equipment; and be responsible for ensuring an acceptable level of technical quality of all programs cablecast on its system, pursuant to FCC regulations. While individuals and community groups may indeed submit programming that was produced outside of the studio, the designated PEG Access provider will not be obligated to cablecast any PEG Access program that does not meet FCC technical standards. However, a decision not to cablecast a program due to technical problems will in no way involve consideration of the actual content of the program itself. CCTV, Inc. will not be held responsible for technical problems under control of the cable system.

CCTV will make the government or public channel available for live or taped broadcast of Carlisle Board of Selectmen Meetings.

CCTV, Inc. will have operating policies and procedures governing PEG Access including but not limited to use of equipment and facilities, training programs, membership, outreach activities, and cablecasting procedures.

CCTV, Inc. will maintain a log of programming that is cablecast on the PEG channels, and a record of PEG producers. Logs will be available for public inspection and retained by CCTV, Inc. for a minimum of three years.

CCTV, Inc. will cablecast all annual and special Town Meetings, public hearings preliminary to Town Meetings, Board of Selectmen and School Committee meetings, and other committee meetings and community events as provided.

The Town of Carlisle and its representatives will make good faith efforts to recruit citizens as volunteers to produce for broadcast the public, education, and governmental activities of the Town.

The directors, managers, and staff of CCTV, Inc. will make themselves available from time to time to advise the Town on matters concerning PEG Access.

CCTV, Inc. will engage in outreach activities designed to inform Town residents and organizations about the availability and use of PEG Access channels and to encourage their use.

CCTV, Inc. will keep a current database of access programs in its library.

CCTV, Inc. will provide a community calendar on the Public Access channels for the purpose of announcing programming and access services, making public service announcements, and allowing the Town, the School Department or other non-profit organizations to make certain announcements. The community calendar will be updated regularly. The community calendar will be cablecast when regular programming is not scheduled.

CCTV, Inc. will be responsible for locating, arranging for use of, managing and maintaining facilities, including payment for rent, for the PEG Access purposes under this agreement, except that the CCTV, Inc. will not be required to pay for the use of Town or School facilities used for PEG Access purposes. The Town will make a good faith effort to assist CCTV in locating such facilities.

CCTV, Inc. will maintain accounting, budget, and business systems for the management, operation, protection, investment, and oversight of the facility and public access services that comply with generally accepted accounting principles.

CCTV, Inc. will provide public access services to those who live, work or attend school in Carlisle on a first-come, first-served, non-discriminatory basis using the designated PEG facility, equipment, staff and other resources as CCTV, Inc. deems necessary and appropriate to fulfill community access management needs.

CCTV, Inc. will work cooperatively with the Town in providing services that may be identified via intermunicipal agreement between Carlisle and other communities.

CCTV, Inc. will make one field camera available to Carlisle when the Agreement is executed, and when provisions for safekeeping, loaning, and record keeping, and insurance are made to the satisfaction of both parties.

The Bylaws of CCTV, Inc. will provide for formal Carlisle representation. The Carlisle Board of Selectmen and the Carlisle School Committee will be entitled to each have a representative on the

TOWN OF CARLISLE

Office of

Board of Selectmen

978.369.6136
fax 978.318.0098

FAX

TO: Deutsch Williams
Attention: Paul DeRensis, Esquire

FAX NO.: 617.951.2323

FROM: Madonna J. McKenzie
Town Administrator

Date: January 3, 2006

Re: Town Counsel Request Form

NO. OF PAGES (including cover page): 14

Attached you will find a Town Counsel Request Form and an Agreement Between the Town of Carlisle and CCTV.

Please note, this fax was sent on December 23rd, please confirm receipt of same.

FAXED

TOWN OF CARLISLE

Office of

Board of Selectmen

978.369.6136
fax 978.318.0098

FAX

TO: Deutsch Williams
Attention: Paul DeRensis, Esq.

FAX NO.: 617. 951. 2323

FROM: Madonna J. McKenzie
Town Administrator

Date: December 23, 2005

Re: Town Counsel Request Form

NO. OF PAGES (including cover page): 14

Attached you will find a Town Counsel Request Form and an Agreement between the Town of Carlisle and CCTV.

FAXED