

DRAFT

FOR TOWN OF LONGMEADOW and LCTV REVIEW ONLY

DRAFT DATED MARCH 17, 2022

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

This Agreement is made this ___th day of _____, 2022 by and between the Select Board of the Town of Longmeadow, Massachusetts (hereinafter referred to as the “Town” or “Longmeadow”) and the Board of Directors of Longmeadow Community Television, Inc. (hereinafter referred to as “LCTV”), a non-profit tax-exempt corporation duly established under the laws of the Commonwealth of Massachusetts.

WHEREAS, the Select Board granted a Cable Television Renewal License to Comcast of Massachusetts II, Inc. (“Comcast”) with an Effective Date of November 15, 2021; and

WHEREAS, the Select Board of the Town and the Board of Directors of LCTV wish to reach agreement on LCTV producing and cablecasting PEG Access programming in Longmeadow.

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 Longmeadow resident and/or any persons affiliated with a Longmeadow institution to use designated facilities, equipment and/or channels of the Cable Television System, subject to the conditions and procedures established for such use.
2. Access Channel: A video channel which the Licensee shall make available, without charge, for the purpose of transmitting programming by members of the public, Town departments and agencies, public schools, educational, institutional and similar organizations.
3. Cable Television System Licensee (“Licensee”): Comcast of Massachusetts II, Inc.
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 designated to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers in the Town.
5. Issuing Authority: The Select Board of the Town of Longmeadow, Massachusetts.
6. LCTV: The acronym for the Longmeadow Community Television, Inc.
7. Origination Capacity: An activated connection to an Upstream I-Net Channel, allowing a User(s) to transmit a Signal(s) upstream to a designated location.
8. PEG: The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.
9. Subscriber: Any Person, firm, corporation or other entity who of which elects to subscribe to, for any purpose, a Service provided by the Licensee by means of, or in connection with, the Cable Television System.
10. Town: The Town of Longmeadow, Massachusetts.
11. 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 Issuing Authority hereby designates LCTV as a 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, LCTV shall provide a written report to the Issuing Authority (the "Report to the IA"), which report shall include the following:

- (a) A copy of LCTV's most recent Annual Report (Form PC) filed with the Attorney General's Office;
- (b) Year-end financial statements, prepared by a licensed independent CPA;
- (c) Previous year's budget and actual expenditures summaries;
- (d) Budget Plan for the current year and two (2) upcoming years in the form as attached **Exhibit A**;
- (e) Hours of programming and cablecast by categories of public, educational and governmental programming categories;
- (f) Notable Events, Actions and Programs;
- (g) Training classes offered and attendance thereto;
- (h) LCTV Policies and Procedures, with any changes thereto from the previous year highlighted; and
- (i) Any other documentation and/or items mutually agreed upon by the parties hereto.

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

(3) LCTV shall provide the following information to the Issuing Authority when prepared and approved but on no less than a quarterly basis:

- (a) LCTV Treasurer's Reports; and

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

(4) Within thirty (30) days of filing, LCTV shall provide a copy to the Issuing Authority 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) LCTV shall cooperate fully and in good faith in answering questions from the Issuing Authority regarding reporting required under this Section 4.

SECTION 5---ANNUAL HEARING

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

(2) LCTV shall provide such information as is reasonably requested by the Issuing Authority.

SECTION 6---ACCESS CORPORATION OBLIGATIONS

LCTV 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 operational funding, pursuant to Section 8 below;
3. Purchase and/or lease equipment, with the funds allocated for such purposes in Section 9 below;
4. Operate and maintain a PEG Access studio in the Town of Longmeadow for PEG Access Subscribers and other users;
5. Conduct periodic training programs for Longmeadow residents and members of Longmeadow-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 LCTV 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 Programming;
9. Provide coverage for key Town meetings and elections. This shall include all Select Board meetings, School Committee meetings, Annual and Special Town Meetings, and local

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elections. All other meetings, including, but not limited to, Planning Board and Finance Committee meetings, shall be covered, upon request of the Issuing Authority, 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 Channel, facilities and equipment as LCTV may consider appropriate and necessary.

SECTION 7---PEG ACCESS CHANNELS

(1) Upon the execution date of this Agreement, LCTV shall continue to be responsible for managing, scheduling, operating and programming the current three (3) Standard Definition (“SD”) PEG Access Channels and the one (1) High Definition (“HD”) PEG Access Channel.

(2) No later than November 15, 2023, LCTV shall have the responsibility for managing, scheduling, operating and programming two (2) HD PEG Access Channels and one (1) SD PEG Access Channel, on the Comcast Cable System, as follows:

- i. One Downstream PEG Access Channel shall be designated the Public Access Channel, but such channel may be used for Educational and Governmental Access programming as well, if and when appropriate.
- ii. One Downstream PEG Access Channel shall be designated the Educational Access Channel. LCTV shall work cooperatively with the Longmeadow School Department and all other educational institutions in Longmeadow to generate programming for the Educational Access Channel.
- iii. One Downstream PEG Access Channel shall be designated the Government Access Channel. LCTV shall work cooperatively with the Select Board and other Town departments to generate programming for the Government Access Channel.

(2) LCTV shall provide a programming schedule for the PEG Access Channels to the Office of the Select Board electronically and to any other interested parties, upon request.

SECTION 8---OPERATIONAL FUNDING FOR PEG ACCESS

In accordance with the provisions of, and procedures in Section 4 above, the Select Board shall provide operational funding to LCTV on a calendar quarterly basis.

SECTION 9---CAPITAL-EQUIPMENT/FACILITIES FUNDING

In accordance with the provisions of, and procedures in, Section 4 above, the Select Board shall provide capital-equipment/facilities funding to LCTV no later than July 1st of each year of this Agreement.

SECTION 10---OWNERSHIP AND CONTROL

(a) To secure all of its obligations under this Agreement, LCTV hereby grants to the Town, a security interest in all of the assets and interests owned or hereafter acquired by LCTV with the funding 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. LCTV agrees to take all steps reasonably requested by the Issuing Authority 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. LCTV shall also notify any institution with which it now or hereafter maintains any deposit account(s) of the existence of the Town's security interest in the account.

(b) All such assets and interests shall at all times remain under the exclusive control of LCTV. LCTV 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 LCTV shall provide the Issuing Authority with a copy of such rules, procedures and guidelines and any amendments thereto. In the event of dissolution of LCTV, all of such 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 LCTV, and if judged to be reasonable and appropriate by the Issuing Authority, the Issuing Authority 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 LCTV might wish to finance.

SECTION 11---PEG ACCESS PROGRAMMING

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

SECTION 12---LCTV BOARD OF DIRECTORS

The Select Board shall have the right to appoint and designate, at its sole discretion, one (1) person to serve on LCTV's Board of Directors throughout the term of this Agreement.

SECTION 13---INDEMNIFICATION

LCTV 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 Issuing Authority, 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), excepting

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therefrom such claims to the extent they arise directly from the negligence or intentional acts of the Select Board, the Town, its officers, boards and employees.

SECTION 14---INSURANCE

(a) LCTV shall carry insurance indemnifying the Issuing Authority, 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) LCTV shall insure all PEG Access equipment for theft, loss and damage.

SECTION 15---ASSIGNMENT

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

SECTION 16---TERMINATION/DISSOLUTION OF THE ACCESS CORPORATION

(a) The Issuing Authority may terminate this Agreement for material breach of this Agreement by LCTV; provided, however, that the Issuing Authority shall give LCTV (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 Issuing Authority shall be that LCTV shall no longer be the designated Access Corporation provider.

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

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(c) In the event that LCTV is dissolved during the term of this Agreement, and/or the Issuing Authority terminates this Agreement with LCTV pursuant to paragraph (a) and/or (b) above, the Issuing Authority 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 owned by LCTV 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 Issuing Authority in writing.

SECTION 17---LEASE OF TOWN BUILDING

As of the execution date of this Agreement, LCTV leases space in a Town-owned building. The current lease is attached hereto as **Exhibit B**. The Issuing Authority and LCTV agree to negotiate future leases, if any, in good faith.

SECTION 18---NONDISCRIMINATION

LCTV 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 and/or status with regard to public assistance. LCTV 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 Select Board, Town of Longmeadow, Longmeadow Town Hall, 20 Williams Street, Longmeadow, Massachusetts 01106 or such other address as the Select Board shall specify in writing to LCTV.

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

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

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

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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, if any. This Agreement shall only be amended by a written agreement between the parties.

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SIGNATURE PAGE

In Witness Whereof, this Agreement is hereby agreed to by the Select Board of the Town of Longmeadow and the Board of Directors of Longmeadow Community Television, Inc., and the parties have hereunto set their hands this ___th day of _____, 2022.

The Town of Longmeadow, MA

By: The Longmeadow Select Board,
as Issuing Authority

Longmeadow Community Television, Inc.

By: Its President

Chair

Vice-Chair

Clerk

Member

Member

EXHIBIT A
LCTV SAMPLE BUDGET PLAN

(See Attached)

EXHIBIT B
TOWN-LCTV LEASE

(See Attached)