

AGREEMENT

by and between

The City of Iowa City, Iowa, and Public Access Television, Inc.

for

Funding, Operation and Management of the Local Public Access Function

FINAL DRAFT VERSION

This Agreement is made by and between the City of Iowa City, Iowa, a municipal corporation ("Iowa City") and Public Access Television, Inc., an Iowa non-profit corporation ("PATV"), (collectively "Parties"). In consideration of their mutual promises, the Parties agree as follows:

RECITALS

1. The City of Iowa City desires to provide support for the use of public access channel(s), namely non-commercial community programming channels provided pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and all other applicable local, State and Federal laws.
2. For the purpose of this Agreement, public access does not include the government, public library, University of Iowa, Kirkwood Community College, or educational access channels.
3. The franchise agreement between Iowa City, Iowa and MCC Iowa LLC provides that certain payments shall be made by MCC Iowa LLC to support the public access channel(s) and community programming.
4. For the purposes of this Agreement, the definition of public access is providing residents or groups of residents of the Iowa City community with equipment, training, professional support, facilities and/or non-profit media program distribution on local channel(s) of local video service systems, reserved by City or State franchise agreements, for public access programming use.

Examples of public access services to be provided for members of the local community would include, but are not limited to, operating a public access facility, employing and providing professional staff and trainers to provide producer support, operating training workshops, providing, scheduling and

maintaining media production equipment, scheduling and managing the cablecast of community or staff produced media programs on the public access channel(s), producing community programming or obtaining programming (live or pre-recorded) of interest to the community, and developing promotional materials or other outreach efforts to build audiences or promote the use of public access services in the community.

5. For the purpose of this Agreement, the definition of Community Programming is a specific kind of public access programming that facilitates community interaction, provides community news and information, supports the communication needs and/or documents the efforts of local non-profit groups and organizations who organize cultural, artistic, and recreational events and activities, who provide social services, who promote local political discussion and debate, who explore issues of economic and environmental development or who document and disseminate the history of the community.

Some examples of community programming include but are not limited to video coverage of such non-profit activities and events as the 4th of July fireworks, Homecoming parade, Run for the School Road Races, local sporting events, local news and documentaries, free local concerts and arts events, coverage of local political caucuses, forums, and rallies, oral and other local histories, local scientific and educational content, and community public service announcements.

6. The City of Iowa City has since 1990 designated PATV as the approved non-profit organization to manage and operate the local public access channel, function, and equipment.

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

Section 1. Scope of Services. In consideration of the funding provided to PATV pursuant to this Agreement, PATV shall perform the following services:

- A. Operate Public Access Cable Channel(s). Operate the public access cable channel(s) for public access and community programming purposes. Operation shall include, but not be limited to, responsibilities for administering, coordinating, and assisting those who request to use the public access channel(s).
- B. Operate an Access Center. Provide a media production facility and equipment that shall be available for public use, the products of which shall be shown on the public access channel.
- C. Provide Equal Access. Allow access and use of equipment and facilities provided herein, together with cablecast time on the public access cable

channel(s), on a non-discriminatory basis to all members of the Iowa City public. This access shall be only for non-commercial programming purposes, whether produced or provided by individuals, groups, or organizations. Non-Iowa City residents may be allowed use of equipment and facilities so long as they pay a minimum annual charge to PATV of twice (2X) the amount equal to the funding determined in Section 14.A.1 of this document divided by the number of video service subscribers as determined on the anniversary of the funding calculation. Additional charges to non-residents may be determined and required by PATV.

- D. Maintain Rules. Maintain written rules and guidelines for the use of the access equipment, facilities, and cablecast time in cooperation with the City. PATV shall provide the City with a copy of said rules and guidelines to allow ICTC to review and comment.

Said rules and guidelines shall be consistent with the Cable Communication Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, FCC regulations, and all other applicable local, State, and Federal laws. Further, any rules and guidelines specific to times and hours of cablecast shall be content-neutral and consistent with the public forum doctrine, namely, time, place and manner.

- E. Training. Provide monthly training in the techniques of media production and facilitate production of community programming by providing technical advice and/or direct staff support.
- F. Client Satisfaction. Conduct assessment of client satisfaction of relevant service, staff, and center offerings including but not limited to training, equipment availability and condition, and staff responsiveness.
- G. Programming. Schedule and cablecast programs a minimum of 70 hours per week on the public access channel(s) according to the adopted rules and guidelines. Character Generated public service announcements cannot be counted for more than 30 minutes per day of the 70 hour per week minimum requirement.
- H. PATV shall regularly send program-listing information to all appropriate agencies so that program information may be included in the local print media (currently the Press-Citizen and Daily Iowan) and on the digital tiers of the local cable TV company(ies), if available.
- I. Maintenance of Equipment. Provide regular maintenance and repair of all equipment and to keep all equipment operational in a reasonable time and basis.
- J. Promotion. Actively promote the use and benefit of the public access

channel(s) and facilities to subscribers, the general public, access users, the City, and MCC Iowa LLC.

- K. Community Programming. PATV shall dedicate a minimum of forty percent (40% +/- 3%) of its monthly programming hours to community programming as defined in this agreement. This ratio of community programming may be as low as 20%, only if it is replaced with new content that is locally produced.
- L. Performance Review. In cooperation with the City and after three years of operation under this Agreement, or any renewal or extension thereof, undertake a performance review that shall include an opportunity for public access users, cable subscribers, and the general public to provide comment.
- M. Other Activities. Undertake other community access activities as deemed appropriate by PATV.
- N. Compliance with Laws, Rules and Regulations. Administer the public access channel(s) and facilities in compliance with applicable federal, state, and local laws, rules, and regulations, the Iowa City Broadband Telecommunications Franchise Enabling Ordinance, and in accordance with the franchise agreement between the City and MCC Iowa LLC.

Section 2. Programming Content. PATV agrees to keep the public access channel(s) and services open to all Iowa City residents that are potential users, and free of censorship, subject to FCC regulations, the Cable Communication Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and all other applicable local, State and Federal laws

Parties agree that they will not attempt to control the content of programming placed on the public access channel(s) to the extent such programming is both lawful and also remains in compliance with the programming rules and guidelines.

Section 3. Indemnification. PATV shall indemnify, defend and hold harmless the City, its officers, agents, and employees, from and against all claims, losses, liabilities, or damages, including payment of reasonable attorney's fees which may arise from the performance of this Agreement, or which may be caused in whole or in part by any act or omission of PATV.

The City shall indemnify, defend, and hold harmless PATV, its officers, agents, and employees from and against any and all claims, losses, liabilities, or damages, including payment of reasonable attorney's fees which may arise from the performance of this Agreement, or which may be caused in whole or in part by any act or omission of the City.

Section 4. Copyright Clearance. Before cablecasting video and/or audio transmission, PATV shall require all users to agree in writing that they have obtained all required rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations; representatives, and without limitation from the foregoing, together with agreements from any and all other persons as may be necessary to transmit its or their program materials over PATV's authorized channel(s). PATV shall maintain copies of all such user agreements for purposes of inspection by the City, upon reasonable notice given by said party, and for the term of the applicable statute of limitations. If and when PATV is notified of any copyright violation contained in any individual program being transmitted by PATV, it agrees to immediately stop exhibition of that same program from all forms of current or future cablecast or public transmission on the cable channels or other transmission outlets that it controls. PATV shall notify the City promptly in writing upon its notification of copyright violation. If PATV violates this provision it agrees to indemnify the City fully as provided in Section 3 above for any liability imposed on the City.

Section 5. Copyright and Ownership. PATV shall own the copyright of any programs which it may choose, from time to time, to produce. Copyright of programming produced by the public shall be held by such person(s) who produces said programming if such person(s) so copyrights, subject, however, to PATV's continuing rights to recording and/or recorded media, both physical media and electronic devices, as is established and governed by PATV's adopted rules and guidelines.

Section 6. Distribution Rights.

- A. PATV shall require that all programs produced with funds, equipment, facilities, or staff pursuant to this Agreement shall be distributed on the cable channel(s) whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other production and distribution (beyond that production and distribution on cable channels authorized by this Agreement), so long as such other distribution is consistent with the approved rules and guidelines as noted above in Section 1 A, B and G. Alternative production and distribution may include "new media" systems. New media is a term meant to encompass the emergence of digital, computerized, or networked information, communication technologies and Internet production and distribution opportunities.
- B. Payments required to obtain cable television distribution rights for programs acquired by PATV primarily for cablecast use may be made by PATV from funds granted under this Agreement.
- C. PATV shall display on a daily basis a credit stating "Partial funding for the operation of this channel is provided by MCC Iowa LLC [along with any other existing cable TV franchises, if any,] and by the City of Iowa City."

Section 7. Equipment and Facilities.

- A. PATV shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to PATV under this Agreement or purchased with funds provided pursuant to this Agreement.
- B. PATV recognizes that this Agreement, or property purchased pursuant to this Agreement, may create a possessory interest subject to property taxation, and that PATV may be subject to the payment of property taxes levied on such interest. PATV agrees to pay any and all lawful and non-exempt taxes, assessments, fees or charges at any time levied by the state, county, city or any tax or assessment levying body upon any property interest in this Agreement or on any possessory right which PATV may have in property, improvements, fixtures or equipment purchased as a result of this Agreement. In the event of protest, PATV agrees to pay said taxes under protest, and in no event will the City be responsible for any fees incurred as a result of such protest.
- C. City Funded Equipment and Facilities. PATV shall own all equipment and facilities acquired by it and purchased with City funds received during the term of this Agreement and in past Agreements. Upon termination or non-renewal of this Agreement, PATV agrees that all PATV's assets, equipment and facilities shall be donated, transferred, reassigned or disposed of pursuant to Section 18.C of this Agreement.

Section 8. Insurance. PATV shall maintain in full force and effect, and at all times during the term of this Agreement, insurance as required by this Section. The cost of such insurance shall be borne by PATV and may be paid from funds received pursuant to this Agreement. The City requires that the Insurance carrier be A- rated or better by A.M. Best. All liability policies shall include the Waiver of Subrogation endorsements in favor of the City of Iowa City.

- A. Liability Insurance. PATV will maintain Comprehensive General liability insurance, bodily Injury and Property Damage insurance with coverage amounts of a minimum of \$1,000,000 for "Each Occurrence" and \$2,000,000 "Aggregate." Comprehensive General Liability shall include Contractual, Premises & Operations, Products & Completed Operations, and Aggregate Limits of Insurance endorsement.

PATV will also maintain Comprehensive automobile liability for any vehicle owned, leased, or operated by PATV, at a minimum of \$1,000,000 for "Each Occurrence" combined single limit.

PATV will maintain Professional Liability with coverage amounts of a minimum of \$1,000,000 for "Each Occurrence" and \$1,000,000 "Aggregate."

- B. Worker's Compensation. PATV will maintain full Worker's Compensation Insurance as required by Iowa Code, Chapter 85.

Employer's Liability insurance with coverage for "Each Occurrence" at \$500,000 for "each accident," \$500,000 for "each employee" and a \$500,000 policy limit.

- C. City as Co-Insured or Additional Insured. PATV shall include the City of Iowa City, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their boards' members, employees and volunteers as additional insured on all policies except workers compensation. Such additional insured endorsement(s) shall make the entities liability insurance primary to the City of Iowa City's and furthermore, shall not be contributing with any other insurance or similar protection available to the City of Iowa City, whether such available protection is primary, contributing or excess. City of Iowa City shall be an additional insured as respects all required aforementioned coverage, which shall be stated on Certificates of insurance that the City of Iowa City is an additional insured. This subsection shall be interpreted to be expressly limited to claims made against Iowa City in relationship to PATV's activities.

- D. Notification of Coverage. PATV will file with the City Certificates of Insurance for coverage required above within thirty (30) days of execution of this Agreement, and annually on the same date thereafter. Upon reasonable written notice, the City may request that Certificates of Insurance be provided at any time.

Section 9. Non-Discrimination in Employment. PATV shall not discriminate against any person, employee, applicant for employment, or subcontractor on the basis of age, color, creed, disability, gender identity, marital status, national origin, race, religion, sex, or sexual orientation or political affiliation.

Section 10. Independent Contractor. It is understood and agreed that PATV is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and PATV. If in the performance of this Agreement any third persons are employed by PATV, such persons shall be entirely and exclusively under the control, direction, and supervision of PATV. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other term of employment shall be determined by PATV, and the City shall have no right or authority over such persons or terms of employment.

Section 11. Assignment. Neither this Agreement nor any interest herein shall be assigned or transferred by PATV, except as expressly authorized in writing by the City.

Section 12. Reports

- A. Annual Reports. PATV shall prepare and provide annually to the City, within 90 days following the end of each year (December 31), a written report of operational activities, which report shall include, but not be limited to, the following information:
1. Current and complete listing of PATV's Board of Directors.
 2. Year-end financial summary.
 3. Written annual reports and statistical comparisons from the previous year, and to other similar access centers if such data is available, studio use, checkout of equipment, editing bay bookings, total number of new producers, total number of workshops taught, total number of new locally-produced programs cablecast on the channel, and total number of new "community" programs cablecast on the channel.
- B. Periodic Reports. PATV shall also prepare and provide periodic reports on the following:
1. Monthly oral reports at Iowa City Telecommunications Commission meetings.
 2. Quarterly written reports for the Iowa City Telecommunications Commission that will include:
 - a. A general report of operational status.
 - b. Current financial statements,
 - c. An accounting on the number of persons trained in the workshops offered during that quarter, their rate of program completion, and whether they are affiliated with any University of Iowa project or class, other educational institution or community organization, or are persons who are not residents of the City of Iowa City,
 - d. Listing of individual community programs produced and cablecast within the last quarter; PATV's role in the production of the community programming listed, if any; the nonprofit organization the program was produced for or reason the event or activity was selected and determined to be a community program, and the run times of each program;
 - e. A report of individual public access programs and their run times produced and cablecast over the quarter.

- f. Other information deemed important by PATV.
- 3. Other reports reasonably requested by the City Council, Iowa City Telecommunications Commission or any current or future franchise agreement.

Section 13. Records. PATV shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

Section 14. Relationship with Cable Franchise.

A. Funding. PATV shall receive funding as a result of the franchise agreement between the City and MCC Iowa LLC. Pursuant to the aforementioned, funds will be made available to PATV as follows:

- 1. City shall pay to PATV monthly 1/12 of an amount based on a 2009 annual payment of \$218,937.21, subject to a yearly escalator as provided in the franchise agreement between Iowa City and MCC Iowa LLC and further subject to the provisions of Subsection A. 2 of this Section.
- 2. All of the above notwithstanding, funding from the City to PATV shall only be provided as long as Cable Television Franchisee is obligated to, and continues to, provide funding as specified in Subsection A. 1. of this Section. City shall not be obligated herein to make any payment to PATV under this agreement unless and until such amount is paid to Iowa City by MCC Iowa LLC.
- 3. In the event that additional Iowa City cable franchise agreements are accomplished by other cable, telephone or similar service providers, the City agrees to make a good faith effort, but without guarantee, to obtain similar or adjusted agreements as defined in Section 14.A.1 of this contract Agreement with the new franchisee(s) if allowed by federal, state, or local law. A good faith effort shall include a request in writing from the City to the franchisee(s). If there are any negotiations between the City and franchisee(s) concerning potential funding for public access, a representative of PATV shall be permitted to be present.

B. Continued Services.

- 1. The Parties shall continue to utilize dedicated channel(s) as provided for in the City's cable ordinance decreeing public access channel dedication.

2. The City will make reasonable efforts to enforce all provisions of its ordinance and franchise agreement regarding public access.

Section 15. Expenditure of Funds. PATV shall spend funds received from the City solely for the purposes listed in this Agreement, and for the purpose of accomplishing PATV's mandate as described in PATV's Articles of Incorporation and Bylaws. Funds not expended in a given fiscal year may be carried over into succeeding fiscal years.

Section 16. Funding From Other Sources. PATV may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to, fund raising activities.

Section 17. Term of Agreement. This Agreement shall commence on May 1, 2009 and end on May 1, 2012, unless terminated earlier, as provided in this Agreement. This Agreement may be extended, by mutual written agreement of the Parties, for an additional three year period as set forth below.

Section 18. Termination of Agreement: Transfer of Assets.

- A. The City shall have the right to terminate this Agreement for breach of any provision of the Agreement by PATV, upon sixty (60) days written notice to said breaching party, provided that the breaching party may avoid termination by curing any such alleged breach within thirty (30) days of notification or within a timeframe agreed to by the Parties. The City may also terminate this Agreement if PATV is dissolved.
- B. PATV shall have the right to terminate this Agreement for breach of any provisions of this Agreement by the City, upon sixty (60) days written notice to them, provided that the City may avoid termination by curing any such alleged breach within thirty (30) days of notification or within a timeframe agreed to by the Parties.
- C. Upon the occurrence of any of the following events, and notwithstanding any provisions to the contrary in PATV's Articles of Incorporation or Bylaws, PATV agrees that the assets of PATV, including any real estate and equipment, shall be transferred or conveyed, at no cost to the City or its designee, by PATV to an organization or entity which the City may designate, which may include the City, to provide public access/ community programming services and offerings:
 1. Termination, for reason provided herein, of this agreement between the City and PATV for the provision of public access/community programming services to the community, including termination for failure to perform as required under said agreement.

2. Dissolution of PATV as a private, non-profit corporation under the laws of the State of Iowa.
 3. Failure by PATV to meet its obligations to repay its mortgage loan under the terms and conditions of said mortgage
- D. The City shall have the right to terminate this Agreement on thirty (30) days written notice to PATV in the event that funding for public access shall cease to be provided by operation of federal or other applicable law. In such event, and notwithstanding Section 14. hereof, the City shall have no liability to provide funding to PATV, nor shall the City be liable to PATV for any damages it may suffer or claim resulting from the termination of this Agreement.

Section 19. Renewal of Agreement. This Agreement may be renewed, extended or renegotiated for additional periods, pursuant to the following process:

- A. If PATV seeks a renewal or renegotiation of this Agreement, it shall do so on or before November 1, 2011 by letter of intent to the City requesting renewal or renegotiation.
- B. The City shall respond to PATV's letter of intent to request renewal or renegotiation of the contract within sixty (60) days. Renewal or renegotiation may not be denied solely on the failure of PATV to make such a request by November 2, 2011 unless the City has provided PATV a written notice of the alleged default and opportunity to cure same, and PATV has not satisfactorily cured said default.
 1. If the City indicates its desire to renew or renegotiate this Agreement, PATV shall, within sixty (60) days, submit to the City a letter accepting the contract as is or outlining the content of the proposed new Agreement including items to be negotiated.
 2. If the City indicates its intention not to renew or renegotiate this Agreement, it must delineate, in writing, specific reasons for said denial. On receipt of the specific reasons for denial, PATV will be allowed sixty (60) days to provide a cure or a plan to cure the problems or issues raised by the City. The City will not be obligated to renew or renegotiate.
- C. Parties to this Agreement shall make all reasonable efforts to reach agreement specific to the renewal in order to prevent unnecessary interruption of the access services provided to the public under this Agreement.

Section 20. Time. Time is of the essence in the performance of this Agreement and for the performance of all covenants and conditions herein.

Section 21. Cooperation. Each Party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement in good faith.

Section 22. Applicable Law. This Agreement shall be interpreted and enforced under applicable laws of the State of Iowa. However, the parties will consider the use of mediation in attempting to resolve any dispute between or among them. In the event of dispute which cannot be resolved through mediation or where mediation has been rejected by one or both of the parties, the courts of jurisdiction shall be the Iowa District Court in and for Johnson County, Iowa, and the Southern United States District Court (Davenport Division).

Section 23. Attorney Fees. In the event a legal dispute arises concerning the terms and conditions of this Agreement, and specific performance, damages and/or criminal prosecution is sought, the prevailing party shall be entitled to reimbursement for all reasonable attorney fees and costs resulting from said litigation.

Section 24. Notices. All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To PATV: _____
Public Access Television, Inc.
206 Lafayette St.
Iowa City, IA 52240

To City: _____
City Clerk
City of Iowa City
410 E. Washington Street
Iowa City, IA 52240

Any party may change its address for notice by written notice to the other party at any time.

Section 25. Entire Agreement. This Agreement is the entire agreement of the Parties, and supersedes all prior negotiations and agreements, whether written or oral. This Agreement may be amended only by written agreement. No purported oral amendment to this Agreement shall be valid.

Section 26. Severability. In the event some portion of this Agreement is found invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Date written above.

CITY OF IOWA CITY,
a municipal corporation

PUBLIC ACCESS TELEVISION, INC.
a non-profit organization

DRAFT

DRAFT

By: _____
Regenia D. Bailey, Mayor

By: _____
PATV Board Chairperson

Date: _____

Date: _____

Attest: _____
Marian K. Karr, City Clerk

Date: _____