

AGREEMENT
BY AND BETWEEN
THE TOWN OF REHOBOTH
AND
REHOBOTH PUBLIC ACCESS CORPORATION, INC.

This Agreement is made this 3rd day of April, 2008, by and between the Town of Rehoboth, Massachusetts, a municipal corporation, acting through its Board of Selectmen (hereinafter also referred to as the "Town"), and Rehoboth Public Access Corporation (hereinafter also referred to as "RePAC"), a nonprofit corporation duly established under the laws of the Commonwealth of Massachusetts), who agree as follows:

RECITALS

WHEREAS, the Town of Rehoboth (hereinafter also referred to as the "Town") granted a Cable Television Renewal License ("Renewal License") to Comcast of Massachusetts, I, Inc, (now operating as Comcast) (hereinafter also referred to as the "Licensee"), for a ten (10) year term from April 10, 2004 through April 9, 2014;

WHEREAS, the License provides in Article 6 of the License ("P.E.G. (Public, Education & Government) Access Channel(s) and Support") that the Licensee shall provide to the Town and its residents certain P.E.G Access

Channels, together with funding and support to the Town and/or its designee (i.e. an access corporation) for P.E.G. access operations, facilities and equipment;

WHEREAS, RePAC has stated its interest in providing P.E.G. access programming, services, facilities and equipment to the Town, its residents, persons affiliated with Rehoboth its businesses and institutions, and other persons or institutions designated by the Board of Selectmen (collectively hereinafter also referred to as “Qualified* Authorized Users”); (*As defined in RePAC By-laws)

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 provisions of Article 6 of the License, enters into this Agreement for the provision, by RePAC, of PEG access programming, services, facilities and equipment to the Town and authorized 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, services, facilities and equipment pursuant to the terms of this Agreement and applicable law.

SECTION 2. TERM

The term of this Agreement shall be from the date of execution of this Agreement through April 9, 2014, unless earlier terminated as provided in herein. This Agreement may be extended by a written instrument signed by the authorized representative(s) of both parties.

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

RePAC shall provide PEG access programming, services, facilities and equipment to the Town of Rehoboth, its Qualified residents and Qualified persons affiliated with Rehoboth businesses and/or institutions (hereinafter referred to as

“Qualified Access Users”), consistent with the limited funds provided to RePAC pursuant to this Agreement and the reasonable availability of access personnel, contractors and access volunteers, and in accordance with applicable law and the operation of a Section 501(c)(3) tax exempt organization, including, but not limited to, the following services:

- (a) Schedule, operate and maintain the Public, Educational and Government Access Channels provided in accordance with Section 6.1(a) of the Renewal License.
- (b) Manage the annual funding provided pursuant to Section 6.3 of the Renewal License.
- (c) Manage the funding provided pursuant to this Agreement;

- (d) Establish, operate and maintain a Public Access studio, and purchase and/or lease equipment with the funds allocated for such purpose pursuant to Section 6.3 of the Renewal License;
- (e) Conduct training programs in the skills necessary to produce quality PEG Access Programming;
- (f) Provide technical assistance, pre-production services, post-production services and production services to Public Access Users, using Access Corporation staff and volunteers;
- (g) Establish rules, procedures and guidelines for use of the PEG Access Channels, facilities and equipment;
- (h) Provide publicity, fund-raising, outreach, referral and other support services to Public Access Users;
- (i) Accomplish such other tasks relating to the operation, scheduling and/or management of the Public Access Channel(s), facility and equipment as appropriate and necessary;
- (j) Produce or assist Access Users in the production or original, non-commercial video programming of interest to Subscribers and focusing on Town, issues, events and activities.
- (k) Cable cast the meetings of the Rehoboth Board of Selectmen, the Dighton-Rehoboth School Committee, the Rehoboth Town Meeting and such other Town of Rehoboth meetings as requested, upon reasonable notice by the respective government body consistent with the funding provided RePAC pursuant to this Agreement and the reasonable availability of access personnel, contractor, and/or volunteers. (Reasonable notice, which does not have to be written notice, shall be deemed to be ten (10) business days. If the requested

coverage of a government meeting is less than ten (10) business days, RePAC shall reasonably attempt to comply with such request, working out any equipment and staffing scheduling to the best of its ability. With respect to the live Cable cast of meetings subject to the Open Meeting Law (M2.L. c. 39, sec. 23B), the board, committee, commission or other government entity holding the respective meeting, RePAC shall comply with any lawful rules or reasonable requirements of a respective board, committee, commission or other town government entity with respect to the camera and sound coverage of a meeting for reasons of public safety. Nothing contained in this subsection is intended to interfere with the rights of any person to videotape a governmental meeting pursuant to the Open Meeting Law;

- (i) RePAC shall, at the request of a respective town government body and/or the Board of Selectmen, provide with respect to any particular meeting, at no cost, one (1) copy of the videotape (or alternative media such as a "dvd") to the Town. RePAC will retain the Master copy for the RePAC Archives. (Copies may be made upon request for a nominal fee.) RePAC shall also provide at the request of the Rehoboth Public Library, one copy of the videotape of each Town Meeting.
- (m) Accomplish such other tasks relating to the operation, scheduling and/or management of the PEG Access Channels, facilities and equipment as appropriate.

SECTION 4. PROVIDING OPEN AND EQUAL ACCESS TO QUALIFIED ACCESS USERS

- (a) RePAC shall provide access to the use of the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all authorized qualified users, whether individuals, groups, or organizations, on a first-come, first-served non-discriminatory basis, pursuant to operating rules promulgated by RePAC and consistent with applicable law.
- (b) ~~RePAC agrees to keep the PEG Access Channel(s) open to all~~ potential users regardless of their viewpoint, subject to FCC regulations and other applicable laws and regulations. (For all age groups)
Neither the Town, nor RePAC shall have the authority to control the content of programming placed on the public Access Channel(s) so long as such programming is lawful. However, nothing herein shall prevent or require RePAC or the Town from producing or sponsoring specific programming unless otherwise required by this Agreement. RePAC shall develop and enforce policies and procedures which are designed to promote local use of the channel(s) and make programming accessible to residents, consistent with such time, manner, and place regulations as are appropriate to provide for and promote the use of PEG Access Channels, equipment and facilities.

SECTION 5. NON-COMMERCIAL PROGRAMMING

- (a) All access programming Cable cast by RePAC shall be noncommercial.
- (b) There shall be no political campaign nor political issue advertising, nor shall any funds Granted to RePAC be used to participate or intervene in

programming.

- (c) Nothing in the Agreement shall prohibit RePAC from including an appropriate under-writing acknowledgment before or after a public access program, to the extent before or after a public access program, to the extent otherwise not prohibited by applicable law and or the terms of a cable license referenced herein.
- (d) RePAC may charge a reasonable fee for the following services:
 - (i) services customarily provided to Access Users by a PEG access corporation; and
 - (ii) services customarily provided to third parties, including tape dubbing (i.e. the provision of videotapes of particular access programs), to the extent otherwise not prohibited by applicable law or the terms of the renewal and/or final license.

SECTION 6. COPYRIGHT CLEARANCE

RePAC shall itself obtain, or require the respective access user to obtain, all rights to all material Cable cast 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 the Access Channel.

SECTION 7. DISTRIBUTION RIGHTS TO PROGRAMS

RePAC shall retain all distribution rights of programs produced by or through RePAC, as long as such other distribution is consistent with any pertinent

guidelines established in the access operating policies and procedures, and in compliance with applicable law and regulations.

SECTION 8. FUNDING AND EQUIPMENT OF THE ACCESS CORPORATION

- (a) RePAC shall receive all funding and equipment required to be paid and provided to RePAC pursuant to Sections 6.3 and 6.4 of the Renewal License.
- (b) RePAC shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon:
 - (i) termination, non-renewal or non-extension of this Agreement and/or
 - (ii) the dissolution or filing (or anticipated filing) of bankruptcy of RePAC, all such equipment or facilities purchased with funds received pursuant to this Agreement and all assets and funds of RePAC attributable to the funding provided by the Town shall become the property of the Town. If deemed necessary by the Town to effectuate said property/asset ownership by the Town, RePAC shall transfer all such equipment, facilities and assets to the Town.
- (c) RePAC shall be responsible for maintenance of all equipment and facilities provided to it pursuant to the Renewal License.

SECTION 9. ACCESS STUDIO

- (a) RePAC shall establish, operate and maintain an access studio within the Town of Rehoboth. The access Studio shall be convenient and

accessible to authorized Access Users, and shall comply with all applicable laws and regulations. The studio shall be available by arrangement upon reasonable request By Qualified Access Users only. RePAC shall make good faith efforts to reasonably accommodate requests for appointments.

- (b) The studio shall be for the exclusive use of Access Users. The studio shall not be used for any other purpose or for the benefit of any persons other than Access Users or persons whose specific use of the access studio benefits PEG access in Rehoboth.

SECTION 10. ANNUAL REPORT

Prior to June 30th of each year, RePAC shall submit to the Town a duplicate report as filed with the state.

SECTION 11. RECORDS AND AUDIT.

RePAC shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

SECTION 12. INDEPENDENT CONTRACTOR

It is understood and agreed that RePAC is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and RePAC. If in the performance of this Agreement any third persons are employed by RePAC, such persons shall be entirely and exclusively under the control, direction and supervision of RePAC. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other

term of employment shall be determined by RePAC and the Town shall have no right or authority over such persons or terms of employment.

SECTION 13. FUNDING FROM OTHER SOURCES

Nothing in this Agreement shall prohibit RePAC from obtaining funding from other sources, including, but not limited to, Fund-raising activities.

SECTION 14 . INDEMNIFICATION

RePAC 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 or persons for or on account of any 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, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged act(s) or omission(s) of RePAC, its officers, employees, volunteers, agents or subcontractors arising out of or resulting from the performance of this Agreement or arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, or for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from RePAC's use of channels, funds, equipment, facilities or staff granted under or obtained pursuant to the funding from this Agreement. As to any matter arising under this indemnity provision, the

Town reserves the right, but not the duty, to select counsel of its choice to represent its interests. This indemnification requirement shall survive the termination or expiration of this Agreement.

SECTION 15. INSURANCE

RePAC shall obtain and maintain full force and effect at all times during the term of this Agreement all insurance required below by this Section.

- (a) **General Comprehensive Liability Insurance** - A general comprehensive 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 (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate.
- (b) **Motor Vehicle Liability Insurance** - Automobile liability insurance for owned motor vehicles the amount of Five Hundred Thousand (\$500,000.00) combined single limit.
- (c) **Business Personal Property Insurance** - Business personal property insurance at the Studio. (For facilities and equipment.)
- (d) **Workers' Compensation** - Workers Compensation in the minimum amount of the statutory limit if and when RePAC has an employee.
- (e) **Cable caster's Errors and Omission Insurance** -
The Access Corporation shall obtain errors and omission insurance to cover the content of productions which are Cable cast 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. Nothing herein shall prevent RePAC from obtaining this insurance at any time.

- (f) **Directors' and Officers' Liability Insurance** - RePAC may, in its discretion, obtain directors' and officers' liability insurance.

SECTION 16. COMPLIANCE WITH LAWS AND REGULATIONS

RePAC shall be governed and operated in accordance with applicable laws and regulations.

SECTION 17. TERMINATION OF AGREEMENT - TRANSFER OF ASSETS

- (a) The Town, through its Board of Selectmen, shall have the right upon sixty (60) days written notice to REPAC to terminate this agreement for:
 - (i) Material breach of any material provision of this Agreement by REPAC;
 - (ii) Malfeasance, misfeasance, misappropriation or waste of funds provided pursuant to this Agreement; or
 - (iii) Loss of 501(c)(3) status by RePAC;
 - (iv) REPAC 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; or

- (v) The amendment or renewal of the cable licenses discontinuing PEG access or PEG access related payments to the town.
- (b) REPAC may avoid termination by curing any such breach within sixty (60) days of notification.
- (c) REPAC shall have the right upon sixty (60) days written notice to the Town to terminate this Agreement for material provision of this Agreement by the Town. The Town may avoid termination by curing any such breach within sixty (60) days of notification.

SECTION 18. MISCELLANEOUS PROVISIONS

Section 18.1 Entire Agreement

This instrument contains the entire agreement between the parties, supercedes 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 19 Cooperation

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

Section 20 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 21 Liability of Town Officials and Employees

To the fullest extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable on any obligation of the Town under this Agreement.

Section 22 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. The term "Force Majeure" as used herein shall include, but not be limited to, the following: acts of God; 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.

Section 23 Non-Waiver

Failure of either party to insist on strict performance of any portion of this agreement or 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 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 24 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 on the term of the Agreement.

Section 25 Applicable Law

This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts.

Section 26 Notice

Official notice shall be in writing, and delivered or sent by certified mail return receipt requested or express mail 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 or express mail shall be deemed to have been given two (2) days 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 REHOBOTH

**REHOBOTH PUBLIC ACCESS
CORPORATION (RePAC)**

Chairman of the Board of Selectmen _____

Municipal Building

148 R Peck Street

Rehoboth, Massachusetts 02769

with a copy to

Town Administrator

Municipal Building

148 R Peck Street

Rehoboth, Massachusetts 02769

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

TOWN OF REHOBOTH

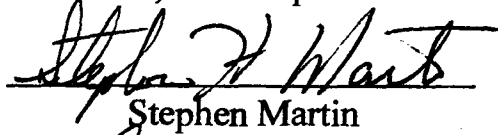
**REHOBOTH PUBLIC ACCESS
CORPORATION (RePAC)**

By its Board of Selectmen:

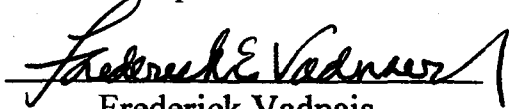
By its President (as authorized by a vote of its Board of Directors):



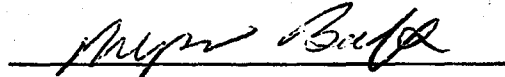
Chairman, Christopher Morra



Stephen Martin



Frederick Vadnais



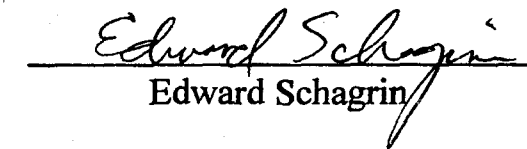
President, Roger Breault



Secretary, Donna Howard



Treasurer, James Johnston



Edward Schagrin



Charles Knisbell