

GRANT AGREEMENT
BY AND BETWEEN THE TOWN OF HINGHAM, MASSACHUSETTS
AND
HINGHAM COMMUNITY ACCESS AND MEDIA, INC.

This Grant Agreement ("Agreement") is made effective as of the 10th day of May, 2022, by and between the Town of Hingham, Massachusetts, acting by and through its Select Board, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with its principal offices located at 210 Central Street, Hingham, MA 02043 (hereinafter referred to as the "Town" or "Hingham") and Hingham Community Access and Media, Inc. d/b/a Harbor Media, a private, non-profit corporation duly established under the laws of the Commonwealth of Massachusetts, of 35 Pond Park Road, Unit # 8, Hingham, MA 02043 (hereinafter referred to as "H-CAM" and/or "Harbor Media").

RECITALS

WHEREAS, the Town granted a Cable Television Final License to Verizon New England, Inc. (hereinafter also referred to as "Verizon") for a five (5) year term from April 22, 2018 through April 21, 2023 (hereinafter referred to herein as "Verizon License Agreement") (references to Verizon in this Agreement shall apply to any and all transferees or successors to Verizon); and

WHEREAS, the Town granted a Cable Television Renewal License to Comcast Cable Communications Management, LLC (hereinafter also referred to as "Comcast") for a ten (10) year renewal term from August 14, 2019 through August 13, 2029 (hereinafter referred to herein as "Comcast License Agreement") (references to Comcast in this Agreement shall apply to any and all transferees or successors to Comcast) (the Verizon and Comcast cable licenses shall be referred to collectively herein as the "Cable Licenses"); and

WHEREAS, the Cable Licenses provide to the Town and its residents certain public, educational, and government ("PEG") Access Channels (sometimes referred to herein as "PEG Access" or "Access"), together with grants for funding and support to the Town and/or its designee for PEG Access operations, facilities and equipment and related services; and

WHEREAS, H-CAM has stated its interest in providing Public and Government Access programming, services, facilities and equipment to the Town, its residents, and Hingham institutions; and

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 the Verizon License Agreement and the Comcast License Agreement, enters into this Agreement as a grant agreement under the provisions of M.G.L. c. 30B, § 2 for the provision by H-CAM of Access programming, services, facilities and equipment to the Town and Access Users, pursuant to the terms of this Agreement, the grants from Verizon and Comcast and all applicable laws;

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 Access programming, services, facilities and equipment pursuant to the terms of this Agreement, the grants from Verizon and Comcast and all applicable laws.

SECTION 2. TERM

This Agreement shall be for a five (5) year term, commencing on May 16, 2022 and running through May 15, 2027, unless earlier terminated as provided herein. This Agreement may be extended or renewed by mutual agreement of the parties.

SECTION 3. SCOPE OF SERVICES

H-CAM shall provide Access programming, services, facilities, and equipment to the Town and to Access Users, as provided in this Agreement, consistent with the grant funds provided to H-CAM pursuant to this Agreement and the reasonable availability of access personnel, contractors and volunteers, and in accordance with applicable law, including, but not limited to, the Internal Revenue Code as applicable to the operation of a Section 501(c)(3) tax exempt organization. The term "Access Users" as used in this Agreement shall mean Hingham residents and persons associated with a Hingham business or organization who have complied with and have successfully completed H-CAM's reasonable requirements for membership and training. All Access programming shall require a Hingham sponsor or sponsors, as determined by the H-CAM Board of Directors. The services, facilities and equipment provided by H-CAM shall be made

available to all Access Users and shall be provided to Access Users on a non-discriminatory basis. The access programming, services, facilities and equipment to be provided by H-CAM includes the following responsibilities, consistent with the funds available to H-CAM:

A. Schedule, program, operate and maintain Hingham's four PEG Access Channels on Comcast and Verizon (Public, Education and Government on SD and the related HD channel) as follows:

- a. Hingham Education channel – This channel should consist of programming that is of educational importance and relevance to Hingham viewers. With the assistance of the H-CAM PEG Educational coordinator, a significant portion of the education programming should be created in conjunction with the Hingham Public Schools as well as other Hingham educational organizations and H-CAM staff and/or Access Users.
- b. Hingham Government channel – This channel should consist of coverage of Hingham Government meetings and other programming that features Town Government services or initiatives. Government programming should be created by H-CAM staff, Access Users and/or freelance production resources.
- c. Hingham Public channel – This channel shall be a “mirror channel” to the HD Channel. A significant portion of public access programming should be created by H-CAM Access Users. H-CAM can assist in the facilitation of this programming with H-CAM loaned equipment and provide production assistance when necessary.
- d. HD Channel – In addition to any other programming on the HD Channel, the HD Channel shall be used as a best of channel for PEG programming on an equitable basis.

B. Provide, facilitate, and encourage the production of programming for the PEG Access Channels, through the operation and maintenance of an Access office/community production center within the Town of Hingham and other portable/remote equipment as follows:

- a. Establish rules, procedures and guidelines (including written Access User agreements, which shall be required for all Access Users) for use of the PEG access Channels, facilities and equipment;

- b. Train Access Users and interns to assist in the production of shows to provide them with the technical expertise to collaborate with H-CAM staff and/or outside vendors to create Public Channel programming. This training should be regularly scheduled and have an "on demand" reservation system. Provide regularly scheduled and promoted production training workshops and webinars with internal and external specialists;
- c. Provide technical assistance to Access Users, using H-CAM staff and/or volunteers;
- d. Provide access to production and post-production equipment for Access Users;
- e. Programming and event coverage shall take into consideration broadcast time availability, community needs, and viewer demographics;
- f. All persons employed by H-CAM to carry out the services under this Agreement shall pass a Criminal Offender Record Information ("CORI") check;
- g. Implement a focused approach to develop a team of volunteer directors, videographers, editors and other crew members;
- h. H-CAM production staff should be responsible for Government Channel meetings and relevant Government Channel production;
- i. Establish a content neutral approach to production by ensuring community producers own their content. The review of submitted materials should be limited to high level technical content only. Implement a waiver to promote community producers to own content. Establish guidelines and qualifications for outside usage;
- j. Implement, promote and maintain a membership program for residents and non-residents with a reasonable membership fee to encourage a wide base of membership;
- k. Limit employee salaries (exclusive of benefits and employer taxes) to 65% of the annual grant funding provided hereunder unless otherwise approved by the Town. H-CAM should focus on utilizing more independent

contractors such as producers, videographers, sound and other technical contractors should be utilized on an as needed basis to the extent practical;

1. Limit rent expenses for any office/community production center to 15% of the annual grant funding provided hereunder unless otherwise approved by the Town.
- C. Responsibly manage the annual grant funding provided to and raised by H-CAM, including the funding provided pursuant to Sections 4 and 5 below.
- D. Purchase (and/or lease) operate and maintain PEG Access equipment with funds provided to H-CAM in accordance with this Agreement.
- E. With regards to Educational access on Hingham's Access channels:
- a. H-CAM shall designate an individual to fulfil the duties of Educational Access Coordinator ("EAC") and work with appropriate school community members to cultivate and prepare for broadcasting on the Educational Access Channel original and diverse programming and features.
 - b. H-CAM shall work with the Hingham School Department to maintain a "RACI Matrix" or an equivalent tracing tool which outlines contact information and delineates who is responsible, accountable, consulted & informed (RACI) for each of the activities necessary to the production and broadcast of content on the Educational Access Channel.
 - c. For matters affecting multiple schools, Hingham Public Schools ("HPS") policies or aligned or associated organizations HCAM shall work through the superintendent, or the superintendent's designee, as the point of contact.
 - d. H-CAM shall take reasonable steps to coordinate with Hingham High School media classes to facilitate the submission of at least two (2) "Airable" programs per month.

F. With regards to Government access on Hingham's Access channels:

- a. The Town will give H-CAM reasonable notice of meetings it requests to have cablecast through the Select Board, or its designee. Reasonable notice is defined as two (2) business days.
 - i. If a request to film and cablecast a meeting is made upon less than two (2) business days' notice, H-CAM will use its best efforts to fulfil the request based upon available resources.
 - ii. The Select Board or its designee has the right to establish priority with respect to cablecasting of government meetings.
 - iii. H-CAM shall comply with any lawful rules and reasonable requirements of the respective governmental body with respect to the camera and sound coverage of a meeting.
 - iv. Nothing contained in this subsection is intended to interfere with the rights of any person to videotape a government meeting pursuant to the Open Meeting Law (M.G.L. c 30A, §§ 18-25).
- b. Each Committee or Board (other than the Select Board) that requests H-CAM coverage of its meeting shall provide H-CAM with the contact information for a contact person to coordinate the setup of the meeting. The Committee or Board shall also designate a moderator/host on the Committee or Board to coordinate with H-CAM during the meeting in order to facilitate effective video and audio coverage of the meeting by H-CAM.
- c. Upon timely request of the Select Board or its designee, H-CAM will provide at no cost to the Town a digital (or other appropriate media) copy of a government meeting previously cablecast by H-CAM, to the extent possible.

G. Accomplish such other tasks relating to the operation, scheduling, and/or management of the PEG Access Channels including High-Definition ("HD") capabilities, facilities and equipment as H-CAM may consider appropriate and necessary.

- H. Make a good faith effort and take all reasonable actions as may be requested by the Town to carry out the obligations with respect to PEG Access that are set out in the Cable Licenses.
- I. Comply with applicable laws and regulations with respect to all programming on the PEG Access Channels.
- J. Distribute and promote programming across social media platforms.

SECTION 4. GRANT FUNDING FOR PEG ACCESS SCOPE OF SERVICES

- A. In order for H-CAM to provide the scope of services as required under Section 3 above and as otherwise required in this Agreement, the Town shall provide to H-CAM funding for annual support for PEG Access in an amount equal to ninety five percent (95%) of the grant funding for PEG Access (quarterly Franchise Fees/Grant Fees) provided to the Town by Comcast under the Comcast License Agreement and under the Verizon License Agreement beginning with the payments made by Comcast and Verizon as of the effective date of this Agreement.
- B. PEG Access grant payments to H-CAM hereunder shall be made on a quarterly basis, within 30 days after receipt by the Town of each PEG Access payment (quarterly Franchise Fees/Grant Fees) from Comcast and/or Verizon.
- C. H-CAM shall be responsible for the maintenance, repair, and replacement of all equipment and property (real or personal) purchased by H-CAM and/or provided to H-CAM pursuant to this Section.
- D. If requested by the Town or the Hingham Cable TV Advisory Committee, H-CAM shall within a reasonable time not to exceed 45 days provide an inventory of all equipment and property (real or personal) acquired and/or owned by H-CAM by grant funds provided by the Town under this Agreement or any prior agreement between the parties or otherwise provided by the Town to H-CAM.
- E. Upon the written request of H-CAM to the Town, the parties hereto may negotiate additional funding requests from H-CAM for operations and/or capital. To this end, H-CAM shall provide to the Town written documentation enumerating and supporting additional requests.

- F. To secure all of its obligations under this Agreement in the event of dissolution or termination of this Agreement, H-CAM hereby grants the Town a security interest in all equipment or property (real or personal) purchased with funding provided pursuant to this Agreement or prior agreements between the Town and H-CAM or otherwise provided by the Town to H-CAM. H-CAM agrees to take all steps reasonably requested by the Town to perfect and enforce the Town's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code. The Town may, in the sole discretion of the Select Board, subordinate its interest in said equipment or property, if necessary, to finance the purchase of additional equipment or property. Such subordination, if made by the Select Board, shall only be with respect to the specific equipment or property that H-CAM might wish to finance. A determination by the Town not to invoke its rights to security interests pursuant to this Agreement shall not affect the obligation of H-CAM to return the subject equipment and property to the Town (or its designee) as required under this Agreement. To further secure its obligations pursuant to this Agreement, H-CAM shall take such reasonable actions as requested by the Select Board or its designee with respect to any funds provided to H-CAM by the Town and which have not as of that time been expended by H-CAM, including, but not limited to, listing the Town as a beneficiary on any such accounts holding such funds.
- G. All equipment and property (real or personal) provided to H-CAM by the Town and/or purchased by H-CAM with grant funds provided by the Town shall at all times remain under the exclusive control of H-CAM, which shall have the right to determine appropriate rules, procedures, and guidelines for the use of said equipment and property consistent with the terms of this Agreement and to amend those rules, procedures, and guidelines from time to time. H-CAM shall provide the Town with a copy of those rules, procedures, and guidelines and any amendments thereto.
- H. H-CAM will limit its excess financial reserves as follows:
- a. Excess financial reserves shall be limited to an amount equal to fifty percent (50%) of the prior year grant funding received by H-CAM under this Agreement (or the prior agreement between the parties).

- b. Financial reserves shall be calculated by the following formula (Total Assets - less liabilities, property, plant and equipment = financial reserves). Excess financial reserves shall be calculated as provided in subsection a. above.
- c. Any excess financial reserves under subsection a. above shall be allocated to a designated programming fund to be distributed to Access Users as production grants. Said fund shall be segregated from all other H-CAM funds and used solely for said production grants which shall be awarded from said fund in equal annual amounts during the term of this Agreement.
- d. The production grants shall be used to improve the amount, scope and quality of Access User generated programming by providing financial assistance to Access Users to cover the cost of producing said programming, including, but not limited to, hiring technical contractors such as videographers, editors, etc. who will assist Access Users in creating and producing content, with the support of the H-CAM staff and equipment, where needed, to minimize production costs.
- e. H-CAM will not be responsible for providing production direction or H-CAM staff for production grant programs and H-CAM will also not be responsible for approving the content of production grant programs on PEG or HD H-CAM cable channels and/or social media distribution. H-CAM will have exclusive air rights to the production grant programs for a two-month period after which additional distribution rights will revert to the producing person or entity.
- f. H-CAM shall adopt guidelines to receive applications for said production grants and to review, award and monitor said production grants. Each grant application shall include a proposed production budget. H-CAM shall create and appoint an independent committee to solicit applications for said production grants and to review and recommend approval of said production grants to H-CAM for final award. The independent committee consist of a total of three (3) members. Two (2) of the members shall be qualified Hingham residents and one (1) member shall be an officer or employee of H-CAM. Said committee shall be appointed by H-CAM subject to comment and approval of

the two (2) qualified Hingham residents by the Hingham Cable TV Advisory Committee.

- g. In the first year of this Agreement H-CAM may expend up to \$20,000.00 of said financial reserves to retain outside consultant(s) to assist in the design, marketing and implementation of the above production grant program.
- I. At the request of the Town, H-CAM will consult on and facilitate the installation and maintenance of video equipment at Hingham Town Hall or any other building not under the direct control of H-CAM. The Town shall be responsible for the costs of installing and maintaining said video equipment.
- J. In the event of the expiration or termination of this Agreement or in the event of dissolution of H-CAM, all funds and all equipment and property (real and personal) provided to H-CAM by the Town and/or purchased by H-CAM with funds provided by the Town shall automatically become the property of the Town and/or its designee and H-CAM shall take all steps necessary to transfer said funds, equipment and property to the Town and/or its designee.

SECTION 5. FUNDING FROM OTHER SOURCES

Nothing in this Agreement shall prohibit H-CAM from obtaining funding from other sources in a lawful manner, including, but not limited to, fundraising activities and/or sponsorships and H-CAM should make all reasonable efforts to enhance their fundraising/sponsorship capability with the goal of increasing outside funding.

SECTION 6. COMPLIANCE WITH LAWS AND REGULATIONS

H-CAM shall be governed by, operated in accordance with, and comply with all applicable laws and regulations.

SECTION 7. PROVIDING REASONABLE ACCESS TO ACCESS USERS

H-CAM shall develop and enforce policies and procedures which promote local use of the Public Access channel and make programming accessible to residents and other Access programming viewers, consistent with such programming guidelines, policies, and rules, including safe harbor provisions, as are appropriate to provide for and promote the use of Access Channels,

equipment and facilities, subject to and in accordance with applicable law. In furtherance hereof, the Town acknowledges that H-CAM may require Public Access program producers to assume individual responsibility for any content-based liability, subject to the Massachusetts Cable Act, Federal Communications Commission requirements, or other applicable law. The parties acknowledge that H-CAM is not ordinarily intended to engage in pre-screening of programming, the Public Access Channel is in the nature of a conduit for third party programming. To further the adoption of reasonable programming policies and rules, H-CAM reserves such rights as are permitted, subject to applicable law, to adopt and implement lawful guidelines and policies to implement the foregoing, including but not limited to guidelines prohibiting obscenity, copyright violation, and other forms of unprotected speech, all subject to due process if and to the extent applicable to a private access corporation, and H-CAM may adopt guidelines and policies allowing lawful scheduling practices, disclaimers, disclosures, user forms and user agreements, and allowing adoption of other lawful program-related guidelines, subject to applicable law. H-CAM may produce its own programming subject to availability of resources.

SECTION 8. NON-COMMERCIAL PROGRAMMING

- A. All PEG Access programming cablecast or otherwise broadcast by H-CAM shall be non-commercial. H-CAM shall not produce programming for airing on H-CAM PEG channels that is commissioned, funded or guided by commercial entities or organizations seeking commercial or public relations benefits.
- B. Nothing in the Agreement shall prohibit H-CAM from including an appropriate underwriting acknowledgment before or after a Public (but not Government or Educational) Access program, to the extent otherwise not prohibited by applicable law and or the terms of a cable license.
- C. H-CAM may offer enhanced underwriting credits before and after shows to appropriate sponsors of no more than thirty second duration. Guidelines for enhanced underwriting credits should follow current PBS Enhanced Underwriting guidelines and not be overtly commercial in nature.
- D. H-CAM may charge a reasonable fee for the following services:
 - a. services customarily provided to third parties for a fee, including video or

audio digital files of particular access programs, to the extent otherwise not prohibited by applicable law, except where H-CAM has agreed to provide such services to the Town without a fee as set forth in this Agreement;

- b. Sponsorship fees; and
- c. Reasonable membership fees in accordance with industry standards.

SECTION 9. COPYRIGHT CLEARANCE

H-CAM shall require the respective Access User to obtain all talent and location releases as appropriate, all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation of the foregoing, from any and all other person(s) as may be necessary to transmit its or their program material over the PEG access Channel in a lawful manner. Access Users shall further identify themselves as responsible for all opinions, statements and other representations made during their program. H-CAM will refer all communications from viewers directly to the named producer of that program. Upon request, all talent, location releases and music rights documentation are to be provided to the Town in a timely fashion and as requested.

SECTION 10. INDEPENDENT CONTRACTOR

It is understood and agreed that H-CAM is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and H-CAM. If in the performance of this Agreement any third persons are employed by H-CAM, such persons shall be entirely and exclusively under the control, direction and supervision of H-CAM. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by H-CAM, and the Town shall have no right or authority over such persons or terms of employment. Notwithstanding varying degrees of Town direction with respect to certain matters herein, it is the intention of the Town that H-CAM be and act as a private corporation, and not as a department of the Town or as a governmental or public body, and that H-CAM therefore shall be overall responsible for the independent implementation and direction of the obligations it undertakes herein, subject to the ultimate control of H-CAM's Board of Directors. In furtherance of the foregoing, the Town acknowledges that notwithstanding its ability to allocate certain cable license grant revenues to H-CAM, H-CAM's Board of Directors shall retain control over the final expenditure decisions with respect to the grant funds it receives

in accordance herewith subject to the terms and conditions of this Agreement. To further fulfill the Town's intention that H-CAM be and operate as a private corporation and not as a public body, the parties acknowledge that H-CAM agrees to exercise diligent efforts to ensure that all Directors, however appointed or elected, act as fiduciaries of H-CAM.

SECTION 11. RECORDS AND AUDIT

- A. H-CAM shall maintain all necessary books and records in accordance with generally accepted accounting principles. Additionally, H-CAM shall:
- a. implement effective internal financial and operating controls for the efficient use of all grant funds and other resources provided pursuant to this Agreement;
 - b. maintain all necessary books and records, in accordance with generally accepted accounting principles;
 - c. have a year-end fiscal audit or review, prepared by an independent certified public accountant. A fiscal audit (rather than a review) shall be performed if: (a) required by applicable law or regulation, or (b) if requested in writing by Select Board no later the end of the fiscal year. The fiscal review may, in limited circumstances, be performed by a person who is not a certified public accountant if presented to the Hingham Cable TV Advisory Committee and authorized in writing by the Select Board; which authorization the Board may in its sole discretion deny;
 - d. make timely payment as due to persons and entities supplying labor, materials or services to H-CAM for any purpose under this Agreement; and
 - e. maintain generally accepted business and accounting practices with respect to its operations and investments, financial oversight and management.
- B. Upon request of the Select Board or Hingham Cable TV Advisory Committee or either of its designee, H-CAM shall, at a reasonable time(s) during normal business hours, make available any or all of its records with respect to matters involving H-CAM's performance of its obligations under this Agreement. H-CAM shall not be required to make available pursuant to this paragraph records

- disclosing personal, proprietary, or confidential information about private citizen producers or records pertaining to program content and program-related activities of private citizens, except as may be required by applicable law or court order.
- C. The Town shall, with costs paid by H-CAM, have the right to have the financial books and records of H-CAM reviewed by a qualified individual or firm. Nothing herein shall be deemed to diminish the responsibility of H-CAM, if any, under applicable law or regulation, with respect to any financial record keeping or financial statement and/or audit requirements. Copies of any financial records, statements or audits shall be provided to the Town upon request of the Select Board or Hingham Cable TV Advisory Committee.
- D. All capital equipment (including furniture) provided to or purchased by H-CAM will be inventoried and permanently marked, and an inventory, including invoice numbers, maintained and updated.

SECTION 12. REPORTS TO THE TOWN

- A. Beginning in Fiscal Year 2023 and each year thereafter, following the filing of its Annual Report (Form PC) to the Massachusetts Attorney General's Office, but in any event no later than April 30th of each year, H-CAM shall provide a written report to the Town. The report will be presented for review by the Hingham Cable TV Advisory Committee before review by the Select Board. The report will be submitted in a professional manner in a booklet both in electronic and hard copy format. The report shall include the following:
- a. A copy of H-CAM's Annual Report (Form PC) filed with the Attorney General's Office;
 - b. Year-end financial statements;
 - c. Previous year's budget and actual expenditures summaries;
 - d. The amount and allocation of any excess financial reserves including all approved production grants;
 - e. Hours of Public, Educational, Governmental Access programming and cablecast by categories. The categories shall include contributed content,

Access User-produced, original, educational, governmental, PSAs (non-governmental), re-aired content, and like categories broken down monthly and yearly;

- f. Training classes offered, schedule of classes and attendance figures;
- g. H-CAM Policies and Procedures, with any changes from the previous year highlighted;
- h. Summary of services provided;
- i. List of future goals including long-range planning goals including current and future regional objectives/aspirations/agreements;
- j. Current and complete listing of H-CAM's Officers and Board of Directors;
- k. A complete current inventory of all equipment acquired and/or owned by H-CAM by grant funds provided by the Town under this Agreement or any prior agreement between the parties or otherwise provided by the Town to H-CAM as well as requirements for H-CAM Access User production equipment usage;
- l. Production budgets for programming, other than educational or government programming, with a budget to actual of each program produced with explanations of significant variances greater than 25% of the initial production budget. Said production budgets shall include the following:
 - For programming produced by internal H-CAM Staff the production budget shall include the number of H-CAM staff hours assigned to produce the programming along with any other additional expenses (i.e. outside equipment, independent contractors or other additional expenses).
 - For freelance produced programming the production budget shall include all costs and expenses associated with the production of said programming (i.e. outside equipment, independent contractors or other additional expenses)
 - Said production budgets shall be in format mutually agreed to by the Town, Hingham Cable TV Advisory Committee and H-CAM;

- m. List of Hingham members and a list of membership fees;
 - n. Educational RACI matrix or an equivalent tracing tool with metrics and progress toward agreed upon goals;
 - o. A copy of all other agreement with government entities utilizing the services or equipment of H-CAM within H-CAM's service area; and
 - p. Any other documentation and/or information mutually agreed upon by the parties hereto.
- B. In addition, no later than April 30th of each year of this Agreement, H-CAM shall provide to the Town its proposed capital and operating budgets for the scope of services hereunder for the upcoming fiscal year.
- C. Upon request, no later than May 15th of each year, H-CAM shall meet with the Hingham Cable TV Advisory Committee or its designee for the purpose of reviewing H-CAM's operations, budget, programming and information contained in the Report and in the proposed capital and operating budgets.
- D. Upon request, no later than June 1st of each year, H-CAM shall meet with the Select Board or its designee for the purpose of reviewing H-CAM's operations, budget, programming and information contained in the Report and in the proposed capital and operating budgets.
- E. The above meetings may be combined into a joint meeting at the discretion of the Town.
- F. H-CAM shall provide the following information to the Select Board and the Hingham Cable TV Advisory Committee:
 - a. H-CAM's Treasurer's Reports (quarterly).
 - b. Meeting minutes for all regular meetings of H-CAM's Board of Directors (quarterly).
 - c. Budget to Actual reports with explanations of variances greater than 10% of budgeted line item (monthly).
 - d. Report of total revenues and allocation of expenditures between the Town of Hingham and other entities within H-CAM (quarterly). This shall include the

following:

- i. Budget to Actual line-item revenues and expenses including but not limited to payroll, rent, utilities, office supplies, marketing, administrative services, accounting, legal and insurance. Entities (Town of Norwell and others if applicable) within H-CAM will utilize accounting methods that make it possible to compare shared expenses in a clear and transparent manner;
 - ii. Methodologies including the calculation and the basis for such allocation (number of employees, revenue, etc ...).
- G. Within thirty (30) days of filing, H-CAM shall provide a copy to the Select Board and the Hingham Cable TV Advisory Committee of all filings with 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 other corporate filings.
- H. H-CAM shall cooperate fully and in good faith in answering questions from the Select Board and/or Hingham Cable TV Advisory Committee regarding reporting required under this Section.

SECTION 13. ADDITIONAL MEETINGS

- A. If requested by the Select Board, H-CAM shall meet with the Select Board or its designee annually to provide an update. The purpose of said meeting shall include reviewing H-CAM' s compliance with the terms and conditions of this Agreement, and questions, comments and/or suggestions from the Select Board, Hingham Cable TV Advisory Committee, other Town officials and the public.
- B. H-CAM shall cooperate with the Select Board or its designee, and shall produce, at its cost, such documents or other materials relevant to such review and evaluation as are reasonably requested by the Town.
- C. H-CAM shall provide notice of all such update meetings by periodic messages on the Public Access channel.
- D. Nothing in this Section shall prohibit the Town from requesting that H-CAM attend

other meetings or hearings.

SECTION 14. PERFORMANCE REVIEW BY THIRD PARTY

No more than once during the term of this Agreement the Town may engage a person or entity knowledgeable and experienced in access operation in the Commonwealth of Massachusetts to conduct a performance review H-CAM's operation. The cost of this review shall be borne by H-CAM. Upon completion, the Town shall submit a copy of the performance review to H-CAM and may schedule a meeting with H-CAM's Board of Directors to discuss the review.

SECTION 15. INDEMNIFICATION OF TOWN BY H-CAM

H-CAM shall release, 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 or arising or resulting from any alleged act(s) or omission(s) of H-CAM, its officers, directors, employees, volunteers, agents or subcontractors or arising from or in connection with any claims, loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements or orders of local, state or federal authorities, for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright, or for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from H-CAM's use of channels, funds, equipment, property, 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 16. INSURANCE

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

- A. *Commercial General Liability Insurance* - Commercial general liability insurance policy, including protective liability, completed operations and broad form contractual liability, property damage and personal injury coverage, with a minimum coverage limit of Two Million Dollars (\$2,000,000) per person and per occurrence, Four Million Dollars (\$4,000,000) aggregate. Said policy shall also include tenant legal liability for property damage, if requested by the Town.
- B. *Motor Vehicle Liability Insurance* - Automobile liability insurance for owned, leased or rented motor vehicles in the amount of Five Hundred Thousand Dollars combined single limit.
- C. *Business Personal Property Insurance* - Business personal property insurance for facilities and equipment in the amount of replacement cost.
- D. *Workers' Compensation* - Workers Compensation in the minimum amount of the statutory limit if and when H-CAM has an employee(s).
- E. *Cablecaster's Errors and Omission Insurance* - H-CAM shall obtain errors and omission insurance to cover the content of productions which are cablecast on the PEG Access Channels or otherwise distributed to include, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual Access producers. The minimum amount of said insurance shall be One Million Dollars (\$1,000,000).
- F. The following conditions shall apply to the insurance policies referenced above:
 - a. The Town shall be named as an additional insured on all aforementioned insurance coverages to the extent allowed by law, other than the workers' compensation policy. The policies shall provide that no cancellation, material change in coverage or expiration may be affected by the insurance company or H-CAM without first giving the Town thirty (30) days written notice prior to the effective date of such cancellation or change in coverage;

- b. All liability insurance shall be written on an "occurrence basis".
- c. Such insurance shall be primary with respect to any insurance or self-insurance maintained by the Town and shall not call on the Town's insurance for contributions.
- d. Such insurance shall be obtained from producers authorized to transact insurance business in the Commonwealth of Massachusetts and, unless otherwise agreed to in writing by the Town, shall be provided by an insurance carrier(s) licensed to do business for the coverage provided in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance.
- e. The coverage amounts set forth above may be met by a combination of underlying and excess/umbrella policies so long as in combination the limits equal or exceed those required herein and follow the same form.
- f. The cost of such insurance, including all premiums and deductibles, shall be borne by H-CAM.
- g. The parties shall periodically review the insurance coverage and coverage amounts required above to determine whether said insurance adequately protects the parties and is cost effective given available funding pursuant to this Agreement.
- h. The failure of H-CAM to maintain the insurance required herein shall be grounds for the Town to suspend or terminate this Agreement, subject to the procedures provided in Section 18 below, subject to an abbreviated cure period as reasonably directed by the Select Board; provided, however, that if any insurance maintained by H-CAM is terminated through no fault of H-CAM, then H-CAM shall have thirty (30) days to obtain replacement insurance that complies with this Agreement or any amendment thereto before the Town may suspend or terminate this Agreement.
- i. If the Town's own minimum coverage amount for any of the insurance referenced above is higher than that required herein of H-CAM or otherwise increases, the Select Board may require H-CAM to increase its corresponding insurance coverage within twelve (12) months of written

notification by the Select Board to H-CAM, unless such increased insurance coverage is commercially unavailable or available only at an unreasonable cost to H-CAM.

- j. Directors' and Officers' Liability Insurance - H-CAM shall obtain directors' and officers' liability insurance for its directors and officers.

SECTION 17. ASSIGNMENT AND TRANSFER

Neither this Agreement nor any interest or responsibility herein shall be assigned or transferred by H-CAM, except as expressly authorized in writing by the Town through its Select Board.

SECTION 18. TERMINATION OF AGREEMENT

- A. The Town, through its Select Board, shall have the right upon thirty (30) days written notice to H-CAM to terminate this Agreement for:
 - a. Malfeasance, misfeasance, misappropriation or waste of funds provided pursuant to this Agreement;
 - b. Loss of (or failure to obtain in a reasonable time) 501(c)(3) status by H-CAM;
 - c. The loss of a substantial portion of PEG Access funding as a result of a change in the financial terms of a cable license, a change in the status of a cable service provider or a change in law rendering this Agreement substantially inconsistent with the intention of the parties; or
 - d. For any material breach of a material provision of this Agreement by H-CAM.
- B. H-CAM may avoid termination by curing any such breach within sixty (60) days of written notification or such longer time as the Select Board determines. Upon a third (3rd) material breach by H-CAM over the course of a twenty-four-month period, the Town may terminate the Agreement upon written notice provided without any cure period as long as said notice is provided within ninety (90) days after the material breach (each day a material breach continues shall be deemed to be an actionable day for purposes of this requirement to terminate within said 90-day period).
- C. H-CAM shall have the right upon sixty (60) days written notice to the Town to

terminate this Agreement for material breach of any material provision of this Agreement by the Town. The Town may avoid termination by curing any such breach within said sixty (60) day period.

- D. All written notices of termination shall include a reasonably detailed description of the alleged breach.

SECTION 19. MISCELLANEOUS PROVISIONS

Section 19.1 Entire Agreement

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

Section 19.2 Cooperation

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

Section 19.3 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 19.4 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 or for any obligation of the Town under this Agreement.

Section 19.5 Warranties

H-CAM warrants, represents and acknowledges that as of the date of execution of this Agreement:

(a) H-CAM is a duly organized, validly existing and in good standing non-profit corporation under the laws of the Commonwealth of Massachusetts and is actively seeking approval from the Internal Revenue Service as a 501(c)(3) charitable corporation.

(b) H-CAM has the requisite power and authority under applicable law and its articles of incorporation and by-laws, is authorized by resolutions of its Board of Directors, and has secured all consents which are required to be obtained as of the date of execution of this Agreement, to enter into and legally bind H-CAM to this Agreement, and to take all actions necessary to perform all of its obligations pursuant to this Agreement.

(c) This Agreement is enforceable against H-CAM in accordance with the provisions herein.

(d) There is no action or proceeding pending or threatened against H-CAM which would interfere with its performance of this Agreement.

Section 19.6 Force Majeure

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability, provided the party takes immediate and diligent steps to comply as soon as possible under the circumstance with this Agreement without endangering the health or safety of persons or property. 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, pandemics, epidemics, landslides, lightening, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, civil disturbances, explosions, strikes, and unavailability of essential equipment, service or materials, or other matters beyond the reasonable control of the party. In the event that any such delay in performance or failure to perform affects only part of the party's capacity to perform, the party shall perform to the maximum extent it is able to do so in as expeditious a manner as possible. The party subject to Force Majeure shall upon learning of the Force Majeure occurrence covered by this Section which affects or will affect its performance under this Agreement, promptly notify the other party in writing of said claimed occurrence.

Section 19.7 Non-Waiver

Failure of either party to insist on strict performance of any portion of this Agreement or to exercise its rights or remedies hereunder upon the failure of performance or default of the other party, shall not be considered a waiver of the right to insist upon or to enforce any provision of this Agreement or to exercise any right or remedy occurring as a result of any future failure of performance or default.

Section 19.8 Severability

(a) If any non-material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void, by any court of competent jurisdiction or other entity with similar legal authority, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Agreement.

(b) In the event that a material section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid, unenforceable or unconstitutional or is otherwise void, by any court of competent jurisdiction or other entity with similar legal authority, the parties agree to immediately enter into negotiations in good faith and make equitable amendments to restore the relative burdens and benefits of this Agreement. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within thirty (30) days of a request by such other party that it enter into negotiations to make amendments, or else the claim of non-materiality is waived. The obligation to negotiate is not tolled by, and the parties must discharge their negotiation responsibility notwithstanding, a dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

Section 19.9 Applicable Law

This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts and shall be binding upon the parties and their respective successors and/or assigns.

Section 19.10 Jurisdiction and Venue

Jurisdiction and venue of any legal action arising from this Access Agreement shall be in the Superior Court in Plymouth County or Suffolk County, Massachusetts and all parties waive

any objection to such jurisdiction and venue. The parties by this Agreement subject themselves to the personal jurisdiction of said courts for all purposes, including the entry of judgment and for the resolution of any dispute, action or suit.

Section 19.11 Notice

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

TOWN OF HINGHAM:	HINGHAM COMMUNITY ACCESS AND MEDIA, INC., d/b/a Harbor Media:
Select Board	35 Pond Park
Hingham Town Hall	Suite 8
210 Central Street	Hingham, MA 02043
Hingham, MA 02043	

With a copy to: Town Administrator at the same address

Section 19.12 Amendment

Amendments to this Agreement shall be mutually agreed to and in writing executed by the parties hereto.

Any approval by the Town required under any section of this Agreement may be made by the Town Administrator.

Section 19.13 Miscellaneous

To the extent applicable, H-CAM certifies that the execution of this Agreement and the providing of the scope of services hereunder by H-CAM and any third party or subcontractor is and shall be in full compliance with the applicable conflict of interest laws including M.G.L. c. 268A and that there are no existing conflicts of interest which would prohibit H-CAM from providing the scope of services hereunder.

To the extent applicable, H-CAM certifies, pursuant to M.G.L. c. 62C, § 49A, that under the penalties of perjury that H-CAM has complied, is complying, and will comply during the terms of this Agreement with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

H-CAM certifies, pursuant to M.G.L. c. 30B, § 10, that under the penalties of perjury any proposal to enter in this Agreement has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

The Town’s liability for payments hereunder are subject to the appropriation of sufficient funds and/or the receipt of funds under the Cable Licenses.

H-CAM shall perform all services hereunder as an independent contractor and payment for such services shall be made without deductions. H-CAM shall be responsible for all withholding taxes, other taxes, contributions to social security and any other deductions which may be required by state or federal law with respect to the services provided hereunder.

Nothing in this Agreement shall create any benefit, right or contractual relationship with any third party including any subcontractors of H-CAM. H-CAM shall be solely liable for all payments to all third parties or subcontractors and shall fully indemnify and hold harmless the Town from any and all claims made against the Town by H-CAM’s third parties or subcontractors.

All prior funds received by the Town under the Cable Licenses which are presently on deposit in Town accounts shall be retained by the Town to be used by the Town for cable related purposes.

This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute one and the same Agreement. In addition, this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include electronically scanned and transmitted versions (e.g., via pdf) of an original signature delivered electronically as if the original had been received.

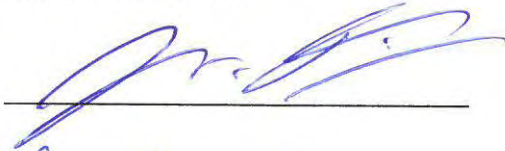
IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the above effective date.

TOWN OF HINGHAM:

**HINGHAM COMMUNITY ACCESS AND
MEDIA, INC., d/b/a Harbor Media:**

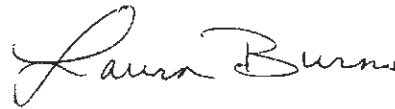
By its Select Board

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



Will Ramsey

Elizabeth W.



President

