

CONTRACT BETWEEN TOWNS OF AQUINNAH, CHILMARK, EDGARTOWN, OAK
BLUFFS, WEST TISBURY, MASSACHUETTS

AND

MARTHA'S VINEYARD COMMUNITY TELEVISION CORPORATION, INC.

AGREEMENT

This Agreement is made this ____ day of _____, 2013, by and between the Towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, and West Tisbury, (individually a "Town" as used in this Agreement and collectively the participating Towns, hereinafter referred to as the "Towns".) A town which is not participating in this Agreement shall not be deemed a "Town" nor part of the "Towns" for purposes of this Agreement.), and Martha's Vineyard Community TV Inc. ("MVTV"), a nonprofit corporation, who agree as follows:

RECITALS

1. The Towns desire to provide support for the use of public, educational, and government ("PEG") access channels provided pursuant to federal law.
2. Each Town has granted a License to Comcast to operate a cable television system within their respective Town limits. (Hereinafter, each License is individually referred to as a "License Agreement" and collectively referred to as the "Comcast License Agreements" or "License Agreements".) (For purposes of this Agreement, "Comcast" shall include any successor or assign of Comcast pursuant to the terms of the Comcast License Agreements.)
3. The Comcast License Agreements provide for three PEG Access channels.
4. The Comcast License Agreements provide that certain ongoing payments shall made by Comcast for PEG access support, and also provide certain PEG Access capital funding for equipment and facilities purposes.

5. Pursuant to State and Federal Law, the Towns may issue more than one cable License.
6. The Towns wish to assure that all residents of each Town receive equivalent PEG channels and services regardless of the Town they live in or the cable Licensee from whom they receive cable services.
7. The Towns have determined that they wish to designate MVTv as the access management organization (designated "Access Provider" as set out in the License Agreements and hereinafter sometimes referred to) to develop, manage and administer the PEG access channels provided pursuant to any current and future Cable Licenses issued by the Towns, to receive the funding support for PEG access as designated in such Cable License Agreements issued by the Towns, and to operate a Community Media Center.
8. MVTv has provided these services to the Towns and their residents for many years and has indicated its interest in continuing to serve the Towns by developing, programming, administering the PEG access channels, and operating a Community Media Center from which to provide services as described herein.

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

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the Towns to MVTv pursuant to this Agreement, MVTv shall provide the following services:

- A. *OPERATE PUBLIC ACCESS CABLE CHANNEL (S).* Operate the public access cable channel(s) for public/community access programming purposes in a manner that is consistent with the principles set forth under federal and Massachusetts law, with the primary purpose being to administer, coordinate, and assist those requesting access on a non-discriminatory basis.
- B. *OPERATE EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNEL (S).* Operate the educational and governmental access channel(s), with the primary purpose being to

administer, coordinate, and assist the Towns and educational institutions requesting access on a non-discriminatory basis.

C. PROVIDE GOVERNMENT AND PUBLIC INTEREST PROGRAMMING:

Provided all 5 towns initially agree to the terms of this Agreement, MVTV shall provide for the production and cablecast of the following local government meetings.

- a. Selectman Meetings (all Towns)
- b. Town Meetings (all Towns)
- c. All Island Selectmen
- d. All-Island School Committee
- e. Regional High School Committee
- f. Airport Commission
- g. Dukes County Commission
- h. Dukes County Advisory Board
- i. Martha's Vineyard Commission
- j. Refuse District
- k. Steamship Authority

If at any time during this Agreement, three (3) or more Towns terminate this Agreement pursuant to Section 18 below, the parties to this Agreement at that time shall, in good faith, determine whether this Section 1C needs to be amended for equitable purposes based on financial reasons.

D. *OPERATE A COMMUNITY MEDIA CENTER.* Manage a community media production facility and equipment, available for public use at such hours and times as are determined by MVTV, but in no event shall average over the course of any three (3) month period less than twenty (20) hours per week, unless otherwise agreed to by the Towns. Access to equipment and facilities shall be open to all members of the Martha's Vineyard community, whether residents (full-time or part-time) or individuals associated with a Martha's Vineyard group, organization, educational institution, business or Town who: (1) satisfactorily complete required training classes provided by MVTV; or (2) receive certification from MVTV, identifying said persons as having satisfied training requirements

through other means.

- E. *PROVIDE EQUAL ACCESS.* Provide access to the use of the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all members of the community for non-commercial programming purposes -- whether individuals, groups, organizations, educational institutions, businesses or the Towns -- pursuant to operating rules promulgated by MVTV and consistent with the principles set forth in the MVTV Policies and Procedures, Articles of Incorporation, and By-Laws.
- F. *COMPLIANCE WITH LAWS RULES, AND REGULATIONS.* Administer the PEG access channels and facilities in compliance with applicable laws, rules, regulations, and in accordance with MVTV Policies and Procedures.
- H. *TRAINING.* Train anyone who lives, works, or attends school in the Towns in the techniques of video production, and provide technical advice regarding the production of programs intended for presentation on one or more of the PEG access channels.
- I. *PLAYBACK/CABLECAST.* Provide for the playback/cablecasting of programs on the PEG access channels, as described in MVTV Policies and Procedures.
- J. *SPECIAL NEEDS GROUPS.* Support special needs groups, where possible, including but not limited to the hearing impaired, in program production through training and other means.
- L. *PROMOTION.* Actively promote the use and benefit of the PEG access channels and facilities to the public, and PEG access users.
- M. *OTHER ACTIVITIES.* Undertake other PEG access programming activities and services as deemed appropriate by MVTV and consistent with the obligation to distribute, facilitate and promote noncommercial community based programming and provide non-discriminatory access.
- N. *POLICIES:* All MVTV Policies and Procedures and by-laws are made available to the

member towns via MVTv website.

SECTION 2. CHANNELS OPEN TO PUBLIC: MVTv agrees to keep the PEG access channels open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither the Towns, nor the Cable Company(ies), nor MVTv shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Provided that, nothing herein shall prevent MVTv, the Towns, or Cable Company(ies) from producing or sponsoring programming, from underwriting programming, or from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable law and rules for use of channels. MVTv may develop and enforce policies and procedures which are designed to promote local use of the channels and make programming accessible to the viewing public, consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 3. INDEMNIFICATION. MVTv shall indemnify, defend, and hold harmless the Towns, its officers, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person (including death), property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged acts or omission of MVTv, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

MVTv shall indemnify and hold harmless the Towns, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person (including death) 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, for

breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from MVTV's use of channels, funds, equipment, facilities or staff granted under this Agreement or the License agreement.

SECTION 4. COPYRIGHT CLEARANCE. Before cablecasting video transmissions, MVTV shall require, consistent with any applicable law, all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the PEG access channels that are operated and managed by MVTV. MVTV shall maintain copies of all such user agreements for inspection by the Towns for the applicable statute of limitations, upon reasonable notice by the Towns.

SECTION 5. COPYRIGHT AND OWNERSHIP. MVTV shall be subject to and shall apply copyright laws, as applicable.

SECTION 6. DISTRIBUTION RIGHTS. MVTV shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures and consistent with any applicable law, subject to the Towns' right to prohibit or restrict the distribution of PEG Access programming to another multichannel video provider to the extent not prohibited by applicable law.

SECTION 7. EQUIPMENT AND FACILITIES. MVTV shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement. It shall not be responsible for equipment used by member towns for additional government meeting coverage.

SECTION 8. INSURANCE. MVTV shall maintain, in full force and effect at all times during

the term of this Agreement, insurance as required by this Section. The cost of such insurance and any deductibles shall be borne by MVTV and shall be included in the MVTV annual budget.

A. *COMMERCIAL GENERAL LIABILITY INSURANCE.* Commercial general liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. (Hereinafter also referred to as the "liability policy".) The limits of such coverage shall be: (1) bodily injury including death, \$1,000,000 for each person, and \$2,000,000 for each occurrence and aggregate; (2) property damage, \$1,000,000 for each occurrence and aggregate.

B. *EQUIPMENT INSURANCE.* Insurance shall be maintained on all equipment and facilities, including fixtures. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, or fire.

C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability shall be maintained with limits as required by Massachusetts law with an insurance carrier satisfactory to the Towns.

D. *CABLECASTER'S ERRORS AND OMISSION INSURANCE.* Insurance shall be maintained to cover the content of productions which are cablecast on the access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; intellectual property; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.

E. *CONDITIONS APPLICABLE TO INSURANCE POLICIES.* The following conditions shall apply as follows to the insurance policies:

- a. The insurance shall be in effect during all times the Agreement is in effect;
- b. The insurance shall be primary with respect to the insurance, if any, maintained by a Town and shall not call on a Town's insurance for contribution;
- c. The insurance shall be obtained from an insurance company(ies) authorized to

transact insurance in the Commonwealth;

- d. The coverage amounts set forth above for commercial general liability insurance may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein;
- e. The Towns shall be named as “additional insureds” on the liability policy.
- f. The failure to obtain or maintain the required insurance shall constitute a material breach of this Agreement;
- g. Neither these insurance requirements, nor the provision of insurance or insurance proceeds by or on behalf of MVTV shall limit the liability of MVTV pursuant to this Agreement, including its indemnification requirements pursuant to Section 3 above;
- h. MVTV shall provide each Town with certificates of insurance for all insurance policies referenced above or otherwise provided by MVTV both at the beginning of the time for this Agreement and at the time of the renewal of any such certificate. All certificates of insurance shall provide a minimum twenty-one (21) day notice of cancellation.

SECTION 9. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

- A. MVTV shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin or physical or mental handicap.
- B. MVTV shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin or physical or mental handicap.

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

over such persons or terms of employment.

SECTION 11. ASSIGNMENT AND SUBLETTING. Neither this Agreement nor any interest herein shall be assigned or transferred by MVTv, except as expressly authorized in writing by Towns.

SECTION 12. ANNUAL REPORTS.

Prior to Sept. 1 of each year, MVTv shall submit to the Towns an annual report for the preceding fiscal year (January 1-December 31). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and services provided;
- B. Current and complete listing of MVTv's Board of Directors; and
- C. Year-end financial statements certified by an independent certified public accountant
 - a. five year capital improvement plan
 - b. budget for current and past year.
- D. Annually, if requested by a Town, the Town's representative to the MVTv board will also provide a verbal report/presentation at a Selectman Meeting at a date and time to be mutually determined between each Town and its rep to MVTv.

SECTION 13. RECORDS, FISCAL AUDIT.

- A. MVTv shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from any of the Towns, MVTv shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.
- C. MVTv shall annually prepare (or have prepared) and made available upon request by the

Towns a fiscal audit by a certified public accountant.

SECTION 14. FUNDING AND OTHER RESOURCES The Towns agree to make the following funds and resources available to MVTv.

A. Resources.

1. Comcast has dedicated three (3) channels for PEG access purposes The Towns agree to permit MVTv to manage that channel capacity for PEG access programming purposes.
2. The Comcast License agreements with the Towns provides that Comcast shall provide, upgrade, and maintain primary and remote PEG Origination Links, including signal transport equipment and cable plant necessary to transport the PEG programming from PEG origination points to Hub sites in each Town, from those Hub sites to MVTv, and from MVTv through to the Comcast Headend. MVTv shall have the responsibility for managing all PEG Origination Links for PEG access programming purposes. Pursuant to the License Agreements, the primary and remote PEG Origination Links include all that are currently in the Comcast contract with the towns. (Section # from Contract)
3. In order to provide equivalent PEG access services to all residents of the Towns regardless of their chosen cable Licensee, if any Town grants a License to provide cable services to any other entity during the term of this Agreement, MVTv shall have the responsibility of managing the channel capacity for PEG access programming purposes delineated in the License agreement with such other entity(ies) provided the licensing fees are maintained at 5% and are directed to MVTv.

B. Funding.

1. Pursuant to the License Agreements, Comcast provides PEG Capital Funding in the amounts set out in Section 6.5 of the respective License Agreements. Each Town is, subject to its right to terminate this Agreement pursuant to Section 18 of this Agreement, hereby designating MVTv as its “designated Access Provider” pursuant to its respective License Agreement. As such, and pursuant to Section 6.5 of the respective Comcast License Agreements, said PEG Capital Funding shall be provided by Comcast to MVTv.
2. Pursuant to Section 6.4 of the Comcast License Agreements of each Town, Comcast shall provide PEG Access payments in the amount of five (5%) of the Gross Annual Revenues less applicable license fee payments to the Town and State only. (“PEG Access Payments”) As such, and pursuant to Section 6.4 of the respective Comcast License Agreements, the PEG Access Payments shall be provided by Comcast to MVTv. Pursuant to Section 6.4 of the Comcast License Agreements, these payments shall be on a quarterly basis to be paid for the previous three (3) month period on or before February 15, May 15, August 15, and November 15. Any interest for late payments from Comcast shall also be provided to MVTv.
3. The Towns shall direct Comcast to provide to MVTv all PEG Access funds specified in Sections 14B(1) and (2) above to be used for the respective PEG access purposes. MVTv shall utilize such funds for the respective PEG Access purposes.
4. If in the future any of the Towns enters into a Cable License Agreement with a company other than Comcast or if the Comcast License Agreement is transferred to another company, the Towns shall direct the Licensee(s) to provide to MVTv all PEG Access Capital Funding and PEG Access Payments for PEG related purposes. MVTv shall utilize such funds for the purchase of equipment and for the purposes delineated in this Agreement.
5. Notwithstanding the Town’s intent to enforce the terms of the Comcast License Agreements under the relevant circumstances and consistent with good cable television “Issuing Authority” cable license administration, nothing in this Agreement

shall make the Towns responsible for any payment(s) required by the Comcast License Agreements or by applicable law which is not made by Comcast.

SECTION 15. EXPENDITURE OF FUNDS. MVTV shall spend funds received pursuant to Comcast License Agreements issued by the Towns for the purposes listed in Section 1 (Scope of Services) of this Agreement and consistent with the terms of said License Agreements. MVTV shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received pursuant to this Agreement. Each town has representation on the Board of Directors. The MVTV Board of Directors has fiscal authority over the MVTV budget.

SECTION 16. FUNDING FROM OTHER SOURCES. MVTV may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities and underwriting.

SECTION 17. TERM OF AGREEMENT. This Agreement shall be for a period commencing on June 30, 2013 and ending in accordance with the effective end date of the respective Comcast License Agreement , unless otherwise extended in writing by the parties.

SECTION 18. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

A. The Towns shall have the right to terminate this Agreement with MVTV upon one hundred twenty (120) days written notice (provided via certified mail to MVTV) for:

1. Breach of any provision of this Agreement by MVTV;
2. Malfeasance, misfeasance, misappropriation of public funds; or
- 3 Loss of 501(c)(3) status by MVTV or revocation or suspension of its Articles of Incorporation by the Commonwealth of Massachusetts.

B. MVTV may avoid termination by curing any such breach to the satisfaction of the Towns within one hundred twenty (120) days of notification or within a time frame agreed to by the Towns and MVTV. The Towns may also terminate this Agreement at the expiration of

its term, or any extension thereof.

SECTION 19. TIME. Each party to this Agreement shall perform its obligations in an expeditious and timely manner, consistent with purposes of this Agreement

SECTION 20. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 23. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the Commonwealth of Massachusetts.

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 Town Manager or Administrator as appropriate of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury, and West Tisbury:

Town Manager/Administrator
Town of Aquinnah
65 State Road
Aquinnah, MA. 02535

Town Manager/Administrator
Town of Chilmark
PO Box 119, 401 Middle Road,
Chilmark, MA.02535

Town Manager/Administrator
Town of Oak Bluffs
P.O. Box 1327,
Oak Bluffs, MA. 02557

Town Manager/Administrator
Town of West Tisbury
1059 State Road, P.O. Box 278
West Tisbury, MA 02575

To Martha's Vineyard Community Television:
Executive Director
P.O. Box 608
Oak Bluffs, MA. 02568

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

SECTION 24. 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 and no purported oral amendment to this Agreement shall be valid.

[Signature Page Follows]

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

TOWNS

**MARTHA’S VINEYARD COMMUNITY
TELEVISION, INC., a Massachusetts
nonprofit corporation**

Town of Aquinnah/Name

Date

Town of Chilmark/Name

Date

Town of Edgartown/Name

Date

Town of Oak Bluffs /Name

Date

Town of West Tisbury/Name

Date

Chairperson, Board of Directors

Date