

April 2024

**RE: Renewal Access Corporation Agreement with CTSB**

We are delighted to let you know the Five Town Cable Advisory Committee (CAC) adopted the attached Renewal Access Corporation Agreement with CTSB at its meeting on April 2, 2024.

This Agreement is a 10-year contract and the counterpart to the Cable TV Renewal License Agreement with Charter/Spectrum.

Like the Cable TV Renewal License Agreement with Charter/Spectrum, this Access Agreement is stronger and provides the Five Towns increased and clearly protections and understandings between the parties.

Thank you in advance for your attention to this Agreement.

When it has been reviewed and signed by your Executive Authority, please make a copy for your files, send the original back to CTSB at 40 Limestone Rd., Lee, MA 01238 and a copy to the Massachusetts Department of Telecommunications and Cable at 1000 Washington Street, Suite 600, Boston, MA 02118.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rene", written in dark ink.

Rene Wood,  
Sheffield's representative to The Five Town Cable Advisory Committee

**RENEWAL ACCESS CORPORATION AGREEMENT**

**BETWEEN**

**THE ACCESS CORPORATION**

**AND**

**THE TOWNS OF  
GREAT BARRINGTON, MA  
TOWN OF LEE, MA  
TOWN OF LENOX, MA  
TOWN OF SHEFFIELD, MA  
TOWN OF STOCKBRIDGE, MA**

**March, 2024**

**TOWN OF GREAT BARRINGTON, MASSACHUSETTS  
And  
COMMUNITY TELEVISION FOR SOUTHERN BERKSHIRES (CTSB)  
ACCESS CORPORATION AGREEMENT**

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## ARTICLE 1 – PREAMBLE

**WHEREAS**, the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge, all of which are municipal corporations organized under the laws of the Commonwealth of Massachusetts acting by and through their Select Boards (“Towns” and “Issuing Authority(-ies)”) have issued a Renewal Cable Television License (“Renewal Licenses”) to Spectrum Northeast, LLC, or any successor or assignee, (“Licensee”) for the provision of the cable television services within their respective corporate boundaries, and

**WHEREAS**, the Renewal License provides for the Licensee to make to the Towns certain annual fixed and variable payments, as well as PEG (Public, Educational and Governmental Access) Capital payments, and

**WHEREAS**, it is the intent of the Towns that such funds should be used for the support and furtherance of the PEG Access (Public, Educational and Governmental Access) Channels, and

**WHEREAS**, Community Television for the Southern Berkshires (“CTSB”, “Access Corporation”) has been incorporated to carry out the programming reasonably anticipated to fulfill the mission of the PEG Access Channels provided by the Licensee to the Towns,

**NOW, THEREFORE**, it is agreed by and between the Towns, acting by and through their Select Boards, and CTSB, acting by and through its Board of Directors, as follows:

## ARTICLE 2 – DEFINITIONS

For the purpose of this Agreement, the following words, terms, phrases, and derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, they and their will be used as pronouns, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and not directive.

**Access Agreement or Agreement:** The Access Corporation Agreement between Community Television for the Southern Berkshires (“Access Corporation”), or a duly designated successor organization, and the five Towns who are party to the Agreement.

**Access Corporation:** An entity designated by the Issuing Authority to manage and operate public, educational and governmental access (PEG) channels in the Town in accordance with this License and 47 U.S.C. 531. Currently, the Access Corporation is the non-profit corporation known as Community Television for The Southern Berkshires Inc. (“CTSB”).

**Access Facility:** The location from which the Access Corporation operates, currently at 40 Limestone Road, Lee, MA 01238.

**Access Programming:** Programing on designated Access Channels, which must be non-commercial within the standards for underwriting applicable to the Public Broadcasting Service (PBS) or the standards necessary for the Access Corporation to maintain its tax exempt status

within the applicable regulations of the Internal Revenue Service. Access programming excludes political advertising.

**Cable Act:** The federal Cable Communications and Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and subsequent amendments, 47 U.S.C. § 521 et seq.

**Cable Advisory Committee:** The Five Town Cable Advisory Committee, as designated and authorized by the Issuing Authorities executing this Agreement, per Article 8 of the Cable Television Renewal License, dated \_\_\_\_\_, 2024.

**Cable License:** The license between the Towns and Licensee, or any successor or assignee, authorizing Licensee to own, operate, and maintain the Cable Television Systems in the Towns.

**Cable Television System or Cable System:** Shall be defined herein as it is defined under Section 602(7) of the Cable Act, 47 U.S.C. 522(7), as may be amended, but currently meaning a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

**Channel:** Shall be defined herein as it is defined under Section 602(4) of the Cable Act, 47 U.S.C. 522(4), as may be amended, but currently meaning a portion of the electromagnetic frequency spectrum which is used in a cable system, and which is capable of delivering a television channel (as television channel is defined by the regulations of the Federal Communications Commission).

**Commercial Programming:** Programming from which revenue is derived, by any party, and the purpose of which is to conduct trade or commerce. It shall not include programming supported by underwriting grants or contributions of any kind.

**CTSB:** The non-profit, PEG Channel Access Provider known as Community Television for the Southern Berkshires Inc.

**Department:** The Massachusetts Department of Telecommunications and Cable or “DTC”.

**Downstream Channel:** A channel over which signals travel from the Cable System Headend to an authorized location within the System.

**Educational Access Channel:** Any channel, which has been allocated for noncommercial educational use by the Town, Issuing Authority, or municipal agencies in accordance with the Cable Television Renewal License Agreement and 47 U.S.C. 531.

**Effective Date:** As provided in Section 3.2 of this Agreement.

**FCC:** The Federal Communications Commission, or any successor agency.

**Governmental Access Channel:** Any channel, which has been allocated for noncommercial, local governmental use by the Town, the Issuing Authority, or municipal agencies in accordance with the Cable TV Renewal License Agreement and 47 U.S.C. 531.

**Issuing Authority:** The Select Board of each of the Towns who are party to this agreement, namely: the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge, Massachusetts in statutory capacity as cable licensing authority pursuant to Mass. General Laws C. 166A, §I. Issuing Authority may be used in the singular or the plural.

**Leased Access:** Any channel available for lease for programming by persons other than Licensee in accordance with 47 U.S.C. 532.

**Licensee:** Spectrum Northeast, LLC, or any successor or assignee in accordance with the terms and conditions of their Cable Television Renewal License and all governing laws and regulations

**PEG Access:** Any Licensee owned channel(s) made available by the Licensee and provided for use for the presentation of PEG Access Programming.

**Programming:** Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**Public Access:** The availability for non-commercial use by any resident, or any organization based in or serving the Town, of designated public access facilities, equipment, training and/or channels of the Cable Television System, as provided in the Cable Television Renewal License and in this Agreement and in accordance with 47 U.S.C. 531.

**Public Access Channel:** A specific channel(s) on the Cable System owned and made available by the Licensee to the Issuing Authority and/or the Access Corporation for use by, among others, the Towns residents and/or non-profit organizations wishing to present non-commercial Programming or information to the public.

**2024 Renewal License(s):** Any or all of the Cable Television Renewal License(s) granted to Spectrum Northeast, LLC, or any successor or assignee by the Select Boards of the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge, Massachusetts, effective as of the final date of execution in the year 2024.

**Town:** The Town of GREAT BARRINGTON, Massachusetts.

**Towns or Five Towns:** The Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge, Massachusetts. Where the context permits, Towns shall also refer to the Issuing Authority of any or all of the Five Towns.

**Upstream Channel:** A channel over which signals travel from an authorized location within the System to the Cable System Headend.

## **ARTICLE 3 – DESIGNATION**

### **Section 3.1 Scope of Designation**

Pursuant to Section 5.2 of the 2024 Cable Television Renewal Licenses (“Renewal License(s)”) between Licensee and the Towns, having an effective date of \_\_\_\_\_, 2024, the respective Select Boards, as Issuing Authorities, hereby designate Community Television for the Southern Berkshires (“CTSB”) as their Access Corporation within the meaning of that term as employed in the respective Renewal Licenses and this Agreement. This designation hereby authorizes CTSB to receive certain PEG Capital funding and annual g funding, as set forth in Sections 5.6 and 5.7 of the 2024 Renewal Licenses, and Article 7 of this Agreement, and further authorizes CTSB to operate the PEG Access Channels for the Towns and services described in said Article 5 of the 2024 Renewal Licenses.

### **Section 3.2 Effective Date**

This Agreement shall commence upon the Effective Date, which shall be the date on which CTSB and the last of the Towns shall have approved this Agreement.

### **Section 3.3 Term of Designation**

Unless otherwise revoked for good cause shown as provided elsewhere within this Agreement, or as required by State or Federal law, this Agreement shall continue for ten (10) calendar years from the Effective Date, expiring one minute before midnight on the ten-year anniversary of such Effective Date.

## **ARTICLE 4 – ADMINISTRATION, REGULATION, AND ACCESS CORPORATION’S PERFORMANCE**

### **Section 4.1 Public Access Use: Operating Rules and Procedures**

The Access Corporation shall be solely responsible for the management and operation of Public Access Programming on the cable system in the Towns including training, quality of originated signals, scheduling the Public Access Channel(s), and managing the Access facilities and equipment. The Access Corporation shall promulgate and maintain a set of access operating rules and procedures, which ensure that training, equipment, facilities, and Access Channel time shall be available to residents and members of any organizations serving any of the respective Towns. These rules and procedures shall ensure the right to use Access Channels, facilities, and equipment on a non-discriminatory, first-come, first-serve basis subject to the terms of this Access Agreement and subject also to the Access Corporation’s goal of establishing regularly scheduled programming. Compliance with such rules shall be monitored by the Access Corporation and may be periodically reviewed by the Issuing Authorities of the respective Towns.

### **Section 4.2 Programming on the Public Access Channels**

Editorial discretion, the content of programming, and the liability therefore placed on the Access Channels operated by the Access Corporation shall solely reside in and be the sole responsibility of the Access producers and the Access Corporation and not the respective Towns or their Licensee. Notwithstanding the forgoing, the Access Corporation Programming shall be designed to achieve the purposes set forth in the Access Corporation’s Articles of Incorporation

and By-Laws, which are available for inspection during the Access Corporation's normal business hours upon request and shall consist of Access Programming as defined in the respective Licenses. To these ends:

1. The Access Corporation shall not sell any proprietary interest that the Access Corporation may have in any Access Programming to any third party without first offering Licensee(s) the right to purchase such interest by matching the best good faith offer tendered in writing by the third party; and
2. All liability, license, and copyright fees associated with the programming produced by the Access Corporation or placed on the Access Channel shall be the sole responsibility of the Access Corporation.

#### **Section 4.3 Coverage of Local Meetings**

The Access Corporation shall cooperate with the Towns to provide coverage of regularly scheduled Select Board and Town Meetings, as well as School Committee meetings. Live Coverage shall be determined upon a multi-Town rotating schedule to be developed by the Access Corporation. Upon reasonable notice from the Issuing Authority, the Access Corporation shall also provide coverage of special meetings of the Select Boards to the extent that such coverage will not present an unreasonable burden to the Access Corporation.

#### **Section 4.4 Cooperation with Town Government**

The Access Corporation shall cooperate with the Issuing Authorities of the respective Towns in the coverage of governmental meetings and in developing programming about the functions of Town Government departments and boards.

#### **Section 4.5 Logs**

The Access Corporation shall keep a log of all Access Programming transmitted on the Access Channel(s) and the names and addresses of all access producers. Such logs will be available for public inspection during the Access Corporation's normal business hours and will be retained for no less than five (5) years.

#### **Section 4.6 Insurance**

At all times during the term of this Agreement, the Access Corporation shall obtain, pay all premiums for and, if requested in writing, file, with each Issuing Authority, insurance company certificates of the following insurance:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, \$4,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$5,000,000 per occurrence

Producer's Liability

\$1,000,000 per occurrence

\$2,000,000 General Aggregate

The commercial general liability insurance identified above shall name each Town, its officers, boards, commissions, committees, agents, and employees as additional co-insureds on all claims on account of injury to or death of a person or persons, occasioned by any aspect of operation or activity of the Access Corporation, or alleged to have been so occasioned. The commercial general liability insurance identified above shall also name each Town, its officers, boards, commissions, committees, agents, and employees as additional co-insureds on all claims of property damage, real or personal, occasioned or alleged to have been so occasioned by any activities of the Access Corporation.

The following conditions shall apply to the insurance policies required herein:

1. Such insurance shall commence no later than the Effective Date of this Agreement;
2. Such insurance shall be primary with respect to any insurance maintained by each Town and shall not call on any of the Town's insurance for contributions;
3. Such insurance shall be obtained from brokers or carrier authorized to transact insurance business in the State; and
4. The Access Corporation's failure to obtain, to procure, or to maintain the required insurance shall constitute a material breach of this Agreement.

#### **4.7 PERFORMANCE BOND**

The Access Corporation shall maintain at its own cost and expense throughout the term of this Agreement a faithful performance bond running to all of the Five Towns, with at least one good and sufficient surety licensed to do business in the State in the sum of Fifty Thousand Dollars (\$50,000). This Performance Bond shall be maintained for the benefit of all of the Five Towns. Said bond shall be conditioned upon the faithful performance and discharge of all material obligations imposed by this Agreement.

The performance bond shall be effective throughout the term of the Agreement and shall be conditioned that in the event that the Access Corporation shall fail to comply with any one or more material terms or conditions of this Agreement, or to comply with any lawful order, permit, direction of any department, agency, commission, committee, board, division or office of the Town having jurisdiction over the Access Corporation's acts, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof, pursuant to the provisions of Article 7 infra.

Said bond shall be a continuing obligation of this Agreement, and thereafter until the Access Corporation has satisfied all of its obligations to the Town that may have arisen from the grant of this Agreement or from the exercise of any privilege therein granted. In the event that the Town recovers from said surety, the Access Corporation shall take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this Section, any bond accepted pursuant hereto, nor any damages recovered thereunder, shall limit the liability of the Access Corporation under this Agreement.

#### **Section 4.8 Determination of Breach, Cure, and Remedies**

Upon determining that a breach or possible breach of this Access Agreement may have occurred, one or more of the Town(s) s concerned shall give written notice of such breach or possible breach to the Access Corporation, with a copy to all other Towns. Upon receipt of such written notice of breach or possible breach, the Access Corporation shall have thirty (30) days to respond in one of the following ways:

1. Cure such breach and provide written report of such cure to the Town(s) concerned, with a copy to all other Towns; or
2. Provide the Town(s) concerned with written proof that such breach did not occur, with a copy to all other Towns

If a breach did occur:

1. If the breach was due to fault on the part of Access Corporation, but for reasons beyond its control cannot be cured within thirty (30) days, the Access Corporation shall provide written proof of same to the Town(s) concerned, and a copy to all other Towns, and a detailed timetable for correction and cure of such breach, for concurrence by the Town(s) concerned; or
2. If the breach was not due to fault on the part of Access Corporation and cannot be cured within thirty (30) days, the Access Corporation shall provide proof of same to Town(s) concerned, and a copy to all other Towns, and a reasonable timetable for cure of such breach for concurrence by the Town(s) concerned; or
3. If, after notification and opportunity to cure as provided in this Section, the Town(s) concerned determine that a breach of this Access Agreement has occurred, and that such breach was not cured within the time duly specified by the procedures set forth in this Section, the Town(s) concerned may elect one or more of the following remedies:
  - i. Withdraw its/ their designation of the Access Corporation granted under Section 3.1 of this Access Agreement and thereby terminate this Access Agreement with respect to the Town(s) concerned;
  - ii. Impose Liquidated Damages as set forth in Section 4.9;
  - iii. Seek to resolve the matter through mediation; or
  - iv. Impose any other sanction as may be agreed upon between the parties.

Any remedy shall be provided in writing by the Town(s) concerned to the Access Corporation, with a copy to all other Towns

#### **Section 4.9 Liquidated Damages**

Liquidated Damages, up to the amounts set forth below, may be assessed against the Access Corporation collectively or individually by the Town(s) concerned upon finding a breach of this Access Agreement, after providing written notice of such breach or possible breach and a specific time period to cure such breach or possible breach, as set forth in Section 4.8, with a copy to all other Towns.

Liquidated Damages shall be assessed on a per day basis, with the start date for such damages, as determined per Section 4.9. Upon assessment of such damages, the Town(s) concerned may require the Access Corporation to make payment for such damages within thirty (30) days of receipt of the Towns' written notice of demand for liquidated damages. Failure to pay such damages within thirty (30) days of receipt of such written demand shall itself



constitute a breach of this Access Agreement. In the event of ongoing penalties, successive and non-cumulative written demands may be sent. Where the amounts for liquidated damages are specified for more than one of the Towns, the amounts specified shall be assessed collectively for all Towns concerned, and not separately for each Town:

1. For failure to maintain qualified, fully trained, and competent personnel to manage and operate the Public Access Programming, as required by Section 4.1: \$100.00 per day;
2. For failure to provide coverage of local meetings as required by Section 4.3: \$50.00 per day;
3. For failure to maintain insurance policies required by Section 4. 6: \$100.00 per day;
4. For failure to prepare or produce Annual Report and/or audit, as required by Section 4.11, or for failure to prepare and file an annual inventory and statement of condition as required by Section 4.14, or for failure to maintain Access Programming Logs as required by Section 4. 5, or for failure to grant to the Town(s), or their authorized representatives, access to the books, records, account(s) and facilities at such reasonable time and at such reasonable places as the Town(s) may require, as required by Section 4.15: \$50.00 per day;
5. For failure to maintain the Access Corporation's 501(c)(3) status, as required by Section 4.12: \$50.00 per day; and
6. For any other breach of this Access Agreement as may be found by the Town(s): \$50.00 per day.

Liquidated damages are a non-exclusive remedy and may be used alone, or in combination with any other remedy for breach permitted.

The Access Corporation shall have the right to appeal any demand for liquidated damages to the Five Town Cable Advisory Committee within thirty (30) days of receipt of the demand of the Town(s) concerned for such damages. Such appeal does not negate the liquidated damages accrued during such mediation. The Five Town Cable Advisory Committee shall need the agreement of a majority of the five Towns' Boards of Selectmen to make any monetary reduction to the demand for liquidated damages.

#### **Section 4.10 Indemnification**

The Access Corporation shall defend, indemnify and hold harmless each of the Towns, their officials, boards, commissions, agents and/or employees and Licensee, and its officers, employees, servants, and agents from and against any claim, without limitation, arising from the Access Corporation's activities under this Access Agreement, whether expressly authorized by such Agreement or otherwise, including but not limited to claims in the nature of libel, slander, invasion of privacy or publicity rights, non-compliance with applicable laws, license fees and unauthorized use of copyrighted material produced and/or cablecast, including reasonable attorneys' fees.

#### **Section 4.11 Annual Report and Audit**

The Access Corporation shall provide an annual report and audit of its finances and operations to members of the Five Town Cable Advisory Committee, the Towns, and Licensee, no later than one hundred and eighty (180) days after the close of the Access Corporation's fiscal year.



**Section 4.12 Status as Non-Profit 501(c)(3) Corporation**

The Access Corporation shall, throughout this Access Agreement, maintain its status as a non-profit 501(c)(3) Corporation by filing all appropriate annual and other statements as may be required from time to time by law or regulation. It shall maintain compliance with all applicable laws, rules, and regulations of the Town in which the Access Corporation's Corporate Office is physically located, the Commonwealth of Massachusetts, and the Federal Government, as shall be enacted from time to time.

**Section 4.13 No Substantive Amendment(s) To Access Corporation's By-Laws Without Notice To Towns**

The Access Corporation shall not make any substantive material amendment(s) to its By-Laws without first presenting the same in writing to the Towns for review and comment, along with a written explanation of the desired amendment(s) and the reasons, therefore. A sixty (60) day notice period following such written notice shall be observed by the Access Corporation prior to affecting any such amendment(s).

**Section 4.14 Maintenance of Records, Equipment and Property**

The Access Corporation shall maintain accurate books, records, and logs of its financial and programming activities, and shall maintain the facilities and equipment provided to it in good repair and safekeeping. Annually, at the time of filing its Annual Report and audit, the Access Corporation shall provide to each of the Town's Issuing Authority an inventory of said equipment and facilities, a statement of its condition, and any corrective actions taken, or recommended to be taken, as needed, to maintain all items in satisfactory condition.

**Section 4.15 Access to Records**

The Access Corporation shall allow the Towns and their authorized designees(s) access to the books, records, accounts, and facilities of the Access Corporation at such reasonable times and in such reasonable places as the Towns may require to ensure compliance with this Access Agreement.

**Section 4.16 Political Activities Prohibited**

No funds, facilities, or equipment provided hereunder shall be used for any partisan or political activity or to further the election or defeat of any political proposition or resolution, or particular candidate for public office. Such prohibition shall not apply to public interest forums, public presentations, or the like where the facilities are available for the expression of all points of view for informational purposes.

**Section 4.17 Transfer Of Property Upon Termination**

Upon termination of this Access Agreement, title to all property, equipment, facilities, and disbursed funds, and the like of the Access Corporation shall be transferred to the Towns, and the Access Corporation shall cooperate fully with the Towns or their designees in effecting a smooth and prompt transfer. This obligation shall survive the termination of this Agreement.

**ARTICLE 5 – ADDITIONAL RENEWAL TERM OF ACCESS AGREEMENT**

An additional renewal term of this Access Agreement may be granted by all of the Towns at their sole discretion. An additional term may be for no longer than five years, or for any shorter length of time, as all of the Towns may, at their sole discretion, and by unanimous

agreement decide. Such an additional term may be so granted, no sooner than sixty (60) days prior to the expiration of the then current term of the Access Agreement or amendment to the Access Agreement. An additional renewal term shall become an amendment to this Access Agreement and be subsequently referred to as the Access Agreement.

## **ARTICLE 6 – ACCESS AGREEMENT TERMINATION**

### **Section 6.1. Automatic Termination**

This Agreement shall automatically terminate upon the adjudication of the bankruptcy of the Access Corporation unless such termination is inconsistent with the orders of any bankruptcy court. This Agreement may be terminated by any Issuing Authority prior to the end of the term set forth in Section 3.3 for any of the following reasons:

1. The Access Corporation has materially failed to fulfill its obligations and responsibilities as set forth in this Agreement.
2. The Access Corporation has materially failed to cooperate with the Issuing Authority in carrying out the purposes of this Agreement.
3. The Access Corporation engages in any malfeasance, misfeasance, or the misappropriation or misuse of funds, which hinders the Access Corporation from performing its obligations and responsibilities as detailed in this Agreement.
4. The Access Corporation engages in any action(s), which hinder or otherwise cause the Access Corporation to jeopardize or lose its federal 501(c)(3) status.
5. The Access Corporation fails to maintain its status as a corporation in good standing with the Commonwealth of Massachusetts or the U.S. Internal Revenue Service.

Before any such termination, the Issuing Authority(ies) concerned shall give the Access Corporation ninety (90) days advance written notice, with copies to all other Issuing Authorities, which notice shall set forth the reasons for the proposed termination and shall advise the Access Corporation that it will be provided the opportunity to cure any breach and be formally heard by the Issuing Authority(ies) concerned in a public hearing before any final action is taken. Said notice shall state the date, time, and place of such hearing. In no event shall such public hearing be held less than sixty (60) days following delivery of such written notice to the Access Corporation.

### **Section 6.2. Termination by the Access Corporation**

The Access Corporation may terminate this Agreement prior to the end of the term set forth in Section 3.3 by a majority vote of its Board of Directors at a regular meeting where this item shall appear on the agenda, or as specified by the By-Laws of the Corporation, for good cause shown and for one of the following reasons:

1. The Issuing Authority(ies) has/have materially failed to fulfill its/their responsibilities as set forth in this Agreement; or
2. The Access Corporation ceases to operate or files any petition in bankruptcy, receivership, or insolvency proceedings; enters into an assignment for the benefit of creditors; or consenting to, or the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of all or substantially all of its assets.

Before any such termination, The Access Corporation shall provide the Issuing Authority(ies) concerned with at least ninety (90) days advance written notice of its intention to terminate this Agreement, with a copy to all other Issuing Authorities. Said notice shall, clearly and in detail, set forth good cause for the reasons for the proposed termination, and shall advise the Issuing Authority(ies) that it/they shall be provided an opportunity to be heard by the Access Corporation Board of Directors regarding such proposed termination before any action is taken. Said notice shall state the date time, and place at which said public hearing shall occur. In no event shall said public hearing be held less than sixty (60) days following receipt of such notice to the Issuing Authority.

At said hearing, the Issuing Authority(ies) concerned shall be provided an opportunity to respond to the reasons for the proposed termination and an opportunity to discuss them with the Board of Directors including discussion of whether the Issuing Authority(ies) has/have cured any alleged breach, and such reasonable cure shall result in withdrawing of the termination action. The Issuing Authority(ies) shall be entitled to reply in writing to said causes and reasons for termination, a copy of which shall be delivered to the Board of Directors no later than thirty (30) days following said hearing. The Board of Directors shall make no decision concerning termination until it has considered said response and its final decision shall be issued in writing to all the Issuing Authorities.

### **Section 6.3 Ownership and Return of Equipment and Undispersed Funds**

Under the terms of this Agreement, all equipment purchased by the Towns or their designee(s) under the terms of the Renewal Licenses shall be the property of the Towns. Upon termination of this Agreement, equipment so purchased may not be used to satisfy any present or future indebtedness of the Access Corporation and is subject to continuing access by the Towns, including the right of removal.

Within fifteen (15) business days following termination of this Agreement, The Access Corporation shall deliver to the Issuing Authorities custody of all equipment and other property acquired by the Access Corporation using funds provided by the Licensee, the Issuing Authorities, or from any grants procured through the Issuing Authorities pursuant to any cable television license ("Outside Funds"), along with an accounting of such equipment and other property.

The Access Corporation will promptly transfer to the Issuing Authorities all Outside Funds held by the Access Corporation and will cooperate fully with the Issuing Authorities to ensure timely payment of the Access Corporation's debts and obligations and an orderly transition to a successor PEG provider. The obligations of this Section shall survive termination of this Agreement. The Access Corporation's failure to comply with the terms of this provision shall constitute a material breach of this Agreement. For the avoidance of doubt, this provision does not apply to equipment and other property acquired by The Access Corporation using its own funds, such as from fundraising, grants independent from the Issuing Authorities, and any other source other than Licensee's funding.

## **ARTICLE 7 –CAPITAL FUNDING, ANNUAL SUPPORT, and FUND-RAISING**

(a) The Access Corporation shall be funded by capital payments made by the Licensee to the five Issuing Authorities, for the benefit of the Access Corporation, and in compliance with the current requirements of municipal finance law. PEG access capital funding grants will be divided up among the Five Towns in proportion to each town's share of the total subscriber count, and paid directly to each Issuing Authority, under the procedure and the time lines more fully set forth in Sec. 5.7 (a) and (b) of the 2024 Renewal Licenses. Consistent with Sec. 5.7 (c) of the 2024 Renewal Licenses, the PEG access capital grants shall be used solely for PEG access capital costs incurred by the Access Corporation in support of PEG Access programming on the PEG Access channels carried on the Cable System. .

(b) The Access Corporation shall also be funded by Annual franchise fee payments, consisting of 5% of the Licensee's Gross Annual Revenues, which shall continue to be paid directly to each Issuing Authority, for the benefit of the Access Corporation, and as set forth in Sec. 5.6 (c) of the 2024 Renewal Licenses. The said franchise fees shall be used for support of the Access Corporation, PEG Access programming, and any other purpose allowed by law.

(c) It is the intent of this Agreement to include any funding enacted by Federal and/or Massachusetts legislation on digital streaming service providers or other such technologies.

(d) With written notice to the Towns prior to doing so, the Access Corporation may undertake its own non-profit fund-raising, which shall conform to all applicable federal, state, and local regulations.

## **ARTICLE 8– CABLE ADVISORY COMMITTEE**

At the discretion of the Issuing Authorities, a Cable Advisory Committee, ("Five Town Cable Advisory Committee" or "CAC"), may be created and vested by the Issuing Authorities with such power and authority as may lawfully be delegated and authorized.

The Issuing Authorities, and/or their designee(s), shall be responsible for the day-to-day regulation of the Cable Television System pursuant to this Agreement and the Cable Television Renewal License. If so authorized, the Issuing Authorities shall enforce, and the Five Town Cable Advisory Committee shall monitor the Access Corporation's compliance with the terms and conditions of this Agreement and the applicable Cable Television Renewal License.

The Access Corporation shall meet with the Issuing Authorities or the Five Town Cable Advisory Committee, as authorized, to review the Access Corporation's compliance with the Access Agreement and the Cable Television Renewal License, as well as review other issues related to the Renewal License and this Agreement. Such meetings may be requested by the Issuing Authorities, the Five Town Cable Advisory Committee, the Access Corporation, or the Licensee.

## **ARTICLE 9 – MISCELLANEOUS**

### **Section 9.1 Assignment and Successor's Bond**

This Access Agreement shall inure to the benefit of the Towns and to their successors and assigns. No assignment may be made by the Access Corporation without the express written consent of all of the Towns.

### **Section 9.2 Waiver and Amendment**

Nothing in this Access Agreement shall prevent all parties from agreeing to waive any provisions of this Agreement by mutual consent. Any such waiver shall be in writing and agreed to by all of the Towns, the Access Corporation, and Licensee, if required. No amendment shall be made to this Access Agreement unless executed in full in the same form as the original Agreement by the Towns. No waivers or amendments agreed upon pursuant to this Section shall prejudice any remaining provisions of this Access Agreement and all such remaining provisions shall at all times remain in full force and effect.

### **Section 9.3 Construction**

The headings herein are for reference and convenience only and shall not be a factor in the interpretation of this Access Agreement.

### **Section 9.4 Severability**

If any section, sentence, paragraph, term, or provision of this Access Agreement is determined to be illegal or unenforceable by any court having jurisdiction, such determination shall have no effect upon the validity of all remaining sections of this Agreement, which shall remain in full force and effect for the full term of this Agreement.

### **Section 9.5 Force Majeure**

If by any reason of Force Majeure, any party is unable in whole or in part to carry out its obligations under this Access Agreement, that party shall not be deemed to be in breach or default during the continuance of such inability. The term "Force Majeure", as used in this Access Agreement shall have the following meanings: Act of God; act of public enemy; orders of any kind of the government of the United States of America or of any of their departments, subdivisions, officials; or of earthquake; fires; hurricanes, volcanic activity; storms; floods; wash outs; droughts; civil disturbances; explosions; strikes; acts of terrorism; and unavailability of essential equipment, services, or material beyond the control of any party.

### **Section 9.6 Entire Agreement**

This Access Agreement contains the entire Agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by a written instrument executed by the parties and in the same form as this Agreement.

### **Section 9.7 Jurisdiction**

Jurisdiction and venue over any dispute or judgment rendered pursuant to any Article herein shall be in a federal or state court or agency of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment.

### **Section 9.8 Notice**

Every notice to be served under this Agreement shall be delivered by hand, sent by certified mail (postage prepaid), or overnight delivery service, and shall be deemed to have been given on the date of hand delivery or on the mailing date thereof. The Parties may also send a required notice by electronic mail as a supplement to, but not instead of, the delivery options set forth in the prior sentence. Notices shall be addressed as follows:

Town of Great Barrington:	Town Manager Great Barrington Town Hall 334 Main Street Great Barrington, MA 01230 (C/O Mark Pruhenski, Town Manager <a href="mailto:Mpruhenski@townofgb.org">Mpruhenski@townofgb.org</a> )
Town of Lee:	Town Manager Memorial Hall 32 Main Street Lee, MA 01238 (C/O R. Christopher Brittain, Town Administrator <a href="mailto:Christopher.brittan@lee.ma.us">Christopher.brittan@lee.ma.us</a> )
Town of Lenox:	Town Manager Lenox Town Hall 6 Walker Street Lenox, MA 01240 (C/O Christopher J. Ketchen, Town Administrator <a href="mailto:cketchen@townoflenox.com">cketchen@townoflenox.com</a> )
Town of Sheffield:	Town Administrator Sheffield Town Hall 21 Depot Square Sheffield, MA 01257 (C/O Rhonda LaBombard, Town Administrator <a href="mailto:Rlabombard@sheffieldma.gov">Rlabombard@sheffieldma.gov</a> )
Town of Stockbridge:	Town Administrator Stockbridge Town Offices PO Box 417 50 Main St. Stockbridge, MA 01262-0417 (C/O Michael Canales, Town Administrator <a href="mailto:townadministrator@stockbridge-ma.gov">townadministrator@stockbridge-ma.gov</a> )

The Access Corporation:  
CTSB General Manager  
40 Limestone Rd.  
Lee, MA 01238  
(C/O Rich Fredericks, Executive Director)  
[Rich@ctsb.org](mailto:Rich@ctsb.org)

It shall be the responsibility of each Party to ensure that its mailing address and e-mail address are up to date and accurate. Accordingly, to the extent the mailing address or e-mail address for either Party changes during the term of this Agreement, that Party shall provide written notice to the other Party within sixty (60) days of such a change. For the purpose of providing a new address, the Parties agree that notice by electronic mail shall suffice.

#### **Section 9.9 TOWN'S RIGHT OF INTERVENTION**

Each Issuing Authority hereby reserves to itself, and the Access Corporation acknowledges each Issuing Authority's right, to the extent authorized by applicable law or regulation, to intervene in any suit, action or proceeding involving this Agreement, or any provision in this Agreement.

#### **Section 9.10 RESERVATION OF RIGHTS**

Acceptance of the terms and conditions of this Agreement will not constitute, nor be deemed to constitute, a waiver, either expressly or impliedly, by the Access Corporation or by the Issuing Authority of any constitutional or legal right, which either party may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The Issuing Authority and Access Corporation acknowledge that each reserve all of their respective rights under applicable Federal and Commonwealth Constitutions and laws.

#### **Section 9.11 Independent Contractor**

It is understood and agreed that CTSB is an independent contractor, and that no relationship of principal/agent or employer/employee exists between any of the Five Towns and CTSB. If in the performance of this Agreement any third persons are employed by CTSB, such persons shall be exclusively and entirely under the control, direction and supervision of CTSB. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring and discharge shall be determined by, and shall be the sole responsibility of CTSB, and the Five Towns shall have no right or authority over, or any obligations to any such person.

## ARTICLE 10 - EXECUTION

TOWN OF GREAT BARRINGTON, MASSACHUSETTS,

By The Select Board,



Stephen Bannon



Leigh Davis



Eric Gabriel



Garfield C. Reed



Benjamin Elliot

Date: April 29, 2024

The Access Corporation:  
COMMUNITY TELEVISION FOR THE  
SOUTHERN BERKSHIRES, INC.

By:   
President of the Board of Directors

Date: 3/26/2024