

FOURTH AMENDMENT (SUBSTITUTE) TO ACCESS MANAGEMENT CONTRACT
 BETWEEN CITY OF MILWAUKEE AND MILWAUKEE ACCESS
 TELECOMMUNICATIONS AUTHORITY, INC.

AGREEMENT FOR SERVICES

This Amendatory Agreement for Services is made this ___ day of _____, 2008, by and between the City of Milwaukee, a municipal corporation ("City"), and the Milwaukee Access Telecommunications Authority, Inc., a nonprofit corporation ("Contractor"), who agree as follows:

RECITALS

Whereas, Contractor is a not-for-profit corporation, organized in Wisconsin, which provides community media production, training and outreach services on a citywide basis; and

Whereas, pursuant to s. 66.0420, Wis. Stats., video service providers that receive a state franchise to operate in the City of Milwaukee are required to provide certain channels and resources dedicated for local public, educational and government use; and

Whereas, in accordance with Section 99-11 of the Milwaukee Code of Ordinances ("MCO"), the City may designate Access Managers to control and manage the use of any or all of the channels, facilities and resources provided for local use; and

Whereas, under this Agreement, the City designates Contractor as an Access Manager for purposes of Chapter 99-11, MCO, and assigns control and management of certain public and educational access channels, facilities and resources; and

Whereas, the Common Council, by Resolution File Number _____ adopted _____, 2008 has authorized the proper City officers to execute this agreement on behalf of the City;

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

- 1 DEFINITIONS. Except as otherwise provided herein, the definitions and word usage set forth in Chapter 99, MCO, are incorporated herein and shall apply unless inconsistent with the definitions in this Agreement and in that instance the definitions in this Agreement shall apply. Words not defined shall be given their normal and customary meaning. Words otherwise defined by applicable state or federal law shall be defined in accordance with such law.

- 2 CHANNELS. The state franchisees have dedicated three active channels for local public and educational use.
- 3 DESIGNATION AS ACCESS MANAGER. The City agrees to permit Contractor to manage the public and educational channel capacity currently provided by franchisees. The Contractor may use the entire capacity of the channels to provide one or more services in analog or digital format. Contractor's use of assigned channel capacity is subject to all the terms and conditions of Chapter 99, MCO, and s. 66.0420, Wis. Stats.
- 4 SCOPE OF SERVICES. In exchange for the consideration received by Contractor pursuant to this Agreement, Contractor shall provide the following services:
 - 4.1 Create and schedule programming for a community educational channel that is responsive to community needs and interests as reasonably identified by Contractor through surveys, studies, discussions and the like. Contractor may acquire and transmit noncommercial programming from local and non-local sources, if such programming addresses community needs and interests;
 - 4.2 Facilitate and support, within reasonable terms and capabilities through contract(s), an educational subsystem channel programmed by member institutions of the Higher Educational Cable Consortium ("HECC"), the Elementary and Secondary Cable Consortium ("ESCC"), or other comparable institutions in the event that a contract cannot be reached with HECC or ESCC.
 - 4.3 Facilitate, manage and support a public access channel to increase community dialogue and use by recruiting and training a diversity of community organizations and individuals, reflective of the entire Milwaukee community, to create programming;
 - 4.4 Promote the importance of improving production quality in public access programming and enforce production standards within reasonable capabilities;
 - 4.5 Make electronic media facilities and equipment accessible to Milwaukee resident individuals and community organizations for public access use;
 - 4.6 Obtain supplemental funds from other sources, including but not limited to fund-raising and revenue-generating activities;
 - 4.7 Undertake other activities as necessary to comply with the public and educational access specifications of Chapter 99, MCO and s. 66.0420, Wis. Stats.; and

- 4.8 Maintain tax-exempt organization status under the Internal Revenue Code. Contractor shall not engage in any activities that would result in the loss of its tax-exempt status
- 5 ANNUAL PLANS. Beginning in the year 2001, Contractor shall annually submit to the City Clerk for review and approval, a capital and operating plan for the following calendar year. Each plan will be due no later than September 30 and will include quantified objectives for each of the services required under Section 4 of this Agreement. The City Clerk, taking into consideration the funding available to Contractor, shall review the plan within 30 days. If the City Clerk determines that the plan does not reasonably provide in material respects for one or more of the objectives of Section 4, he or she shall return it to the Contractor with comments identifying the missed objectives and how the missed objectives can be achieved. If the City Clerk returns the plan, the Contractor shall make changes as necessary and within thirty (30) days resubmit the plan to the City Clerk for review and approval. If the City Clerk determines that the revised plan does not reasonably provide in material respects for one or more of the objectives of section 4, he or she shall so inform the Common Council, which then may consider termination of this Agreement pursuant to Section 9.1.3.
- 6 RECORDS AND REPORTS.
- 6.1 Contractor shall maintain all necessary books and records, as determined by the City Clerk, in accordance with generally accepted accounting principles for a period of at least six (6) years.
- 6.2 Upon reasonable request from the City Clerk and subject to the provisions of sub-chapter II of Chapter 19, Wis. Stats, Contractor shall make available, at any time during normal business hours, all of its records with respect to all matters covered by this Agreement.
- 6.3 Contractor shall provide the City Clerk with a copy of the policies and procedures, together with any subsequent amendments, required under Chapter 99-11, MCO.
- 6.4 Within thirty (30) days after the close of each fiscal year quarter, Contractor shall submit to the City Clerk an activity report responsive to Contractor's annual plan under Section 5. The City shall not use this information in any way to control the specific viewpoint or content of any program. Unless Contractor and the City Clerk agree to a different report format or different reporting parameters, the quarterly activity report shall contain at least the following information:
- 6.4.1 For community educational programming created by Contractor pursuant to

Section 4.1:

- (1) Programming and services, by quantity, cumulative length, category and source (i.e., produced through Contractor facilities, acquired from local and non-local sources, etc.); and
- (2) Detail supporting the relationship between the needs and interests of the community and the programming and services provided on the community educational channel bandwidth.

6.4.2 For educational subsystem programming facilitated pursuant to Section 4.2:

- (1) Listing of participating educational institutions and identification of educational objectives of the subsystem, as determined by the participating institutions;
- (2) Number and type of support services provided by Contractor;
- (3) Programming and services available on the educational access channel bandwidth, by quantity, cumulative length, and category ; and
- (4) Detail, to the extent made available to Contractor, supporting the relationship between the educational objectives of the subsystem and the programming and services provided on the educational access channel bandwidth.

6.4.3 For public access programming facilitated pursuant to Section 4.3:

- (1) Topics and number of training workshops offered;
- (2) Numbers of persons attending;
- (3) Number of persons certified;
- (4) Number of hours the facilities and equipment are used by the public based on the hours available for public use;
- (5) Programming and services available on the public access channel bandwidth by quantity, cumulative length, category, and source (i.e.,

individual, community organization, etc.).

- 6.4.4 Such additional information as necessary to reasonably demonstrate compliance with an annual plan.
- 6.5 Within thirty (30) days after the close of each Fiscal Year quarter, Contractor shall submit a financial report to the City Clerk based on the Fiscal Year budget. The quarterly financial report shall be in a format approved by the City Clerk and City Comptroller and shall address the following categories of information:
- 6.5.1 Amount of revenue by classification of source;
- 6.5.2 Capital expenditures, by budgetary line item; and
- 6.5.3 Operating expenditures, by budgetary line item.
- 6.6 Within one hundred twenty (120) days after the close of each fiscal year, Contractor shall submit to the City financial statements prepared in accordance with generally accepted accounting principles. Such financial statements shall be audited by an independent Certified Public Accountant and shall be in a format approved by the City Comptroller.
- 7 TERM. The term of this agreement shall commence on the first day of the month following execution and, except as provided in Section 9, remain in effect until December 31, 2017.
- 8 FUNDING AND METHOD OF PAYMENT.
- 8.1 The City shall make payments to the Contractor in accordance with the following schedule:
- 8.1.1 Beginning January of 2001, the City shall pay the amount of One Hundred Twenty Five Thousand Dollars (\$125,000) per quarter upon receipt of a duly authorized invoice submitted by Contractor to the City Clerk on or after February 15, May 15, August 15 and November 15 of each year; provided, however, that beginning January of 2006, the quarterly payments shall be in the amounts specified on a schedule developed by the City Clerk (See Exhibit B) to reflect the sale of such limited number of investments, made by the City Treasurer using PEG Grant funds previously received by the City, as is necessary to fund the grant set forth in Section 8.1.2.
- 8.1.2 Upon approval by the City Clerk, the City shall provide a grant in the amount of

One Million Three Hundred Thousand Dollars (\$1,300,000), restricted for use in satisfying, in their entirety, all mortgage liens on Contractor's real property other than liens of the City, upon receipt of a duly authorized invoice submitted by Contractor to the City Clerk with such supporting documentation as the City Clerk shall require.

- 8.2 Under a schedule established by the City Clerk, but not less than annually, the City shall provide an additional amount to Contractor equal to two-thirds of the PEG Grant payments received under s. 66.0420, Wis. Stats.
- 8.3 The City reserves the right to request modifications to, or to seek early termination of this Agreement because of any changes in federal or state law which impair its ability to comply with the funding obligations set forth in Section 8.1. The Contractor reserves the right to request modifications to, or to seek early termination of, this Agreement because of any changes in federal or state law which impair the Contractor's ability to comply with the service obligations set forth in Sections 4, 5 and 6 of this Agreement.

9 REGULATORY PROVISIONS.

- 9.1 This Agreement may be terminated, after notice and hearing, upon a determination by the City, that:
- 9.1.1 Funds or assets the Contractor has acquired from the City are in immediate danger of waste;
- 9.1.2 After reasonable opportunity to do so, the Contractor has not remedied the deficiencies giving rise to the City determinations under Section 9.1.1 or, after reasonable notice and opportunity to do so, the Contractor has failed to remedy any violation by Contractor of a material provision of this Agreement;
- 9.1.3 Contractor, taking into account available funding, fails to propose satisfactory levels of service pursuant to Section 4 of this Agreement.
- 9.2 In the event of contract termination, Contractor dissolution, or failure of the City to extend this Agreement beyond the date set forth in Section 7, and the City so directs by resolution, the Contractor shall pay and transfer to the City or pay and transfer to an organization or organizations, tax exempt under Section 501(c)(3), designated by the City any unexpended funds, and earnings thereon, received by the Contractor at any time from the City and, subject to purchase-money liens and encumbrances, title to all real and personal property

owned by the Contractor and all leasehold or other rights held by Contractor in real and personal property not owned by Contractor, provided the ownership or rights were obtained by the Contractor from the City.

- 9.3 Nothing herein shall entitle the City to recover funds or property identified in Exhibit A or to recover funds or property provided by sources other than the City.
- 9.4 The City may only consider the content of programming, including the Contractor's or a producer's choice of subject matter and the point of view expressed, in order to make a determination of whether the Contractor has complied with its obligation under Section 4.1.
- 10 **ASSIGNMENT.** The Contractor shall not assign or transfer any interest in this Agreement without prior written consent of the City, provided, however, that nothing herein shall prevent the Contractor from subcontracting the performance of any provision or obligation required by this Agreement, so long as the Contractor remains primarily responsible to the City for the performance of such provision or obligation.
- 11 **GENERAL PROVISIONS.**
- 11.1 The Contractor shall make payment promptly as due to persons supplying services for work provided under this Agreement.
- 11.2 The Contractor shall not cause any lien or claim to be filed or prosecuted against the City on account of labor furnished or materials or equipment installed.
- 11.3 **Insurance.** Contractor shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section, unless waived by the City Clerk. The cost of such insurance shall be borne by Contractor.
- 11.3.1 *Comprehensive Liability Insurance.* Comprehensive 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. The limits of such coverage shall be:
- (1) bodily injury including death, \$1,000,000 for each person, each occurrence and aggregate;
 - (2) Property damage, \$1,000,000 for each occurrence and aggregate.

- 11.3.2 *Equipment Insurance.* Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe. City shall be shown as lien holder on all policies to the extent of the City's interest.
- 11.3.3 *Workers' Compensation.* Full Workers' Compensation insurance and Employer's Liability with limits as required by Wisconsin law with an insurance carrier satisfactory to the City.
- 11.3.4 *Video Service Provider's Errors and Omissions Insurance.* Contractor shall maintain insurance to cover the content of programming 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; misuse of musical or literary materials. This policy shall not be required to cover individual access producers. The City Clerk may waive this provision if Contractor demonstrates that this type of coverage is either not available or only available at unreasonable costs.
- 11.3.5 *City as Co-insured or Additional Insured.* The City, its officers, employees and agents shall be named as a co-insured or additional insured on all aforementioned insurance coverage. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or Contractor without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the City, its officers, agents, employees, or volunteers shall be in excess of the Contractor insurance and shall not contribute to it.
- 11.3.6 *Notification of Coverage.* Contractor shall file with the City proof of insurance coverage as follows:
- (1) Comprehensive Liability and Workers' Compensation;
 - (2) Equipment insurance upon the acquisition of any equipment separately scheduled or in excess of existing limits; and
 - (3) Video service provider's error and omission insurance within thirty (30)

days of the commencement of carriage of programming on the designated access channel

11.4 Except as provided in Section 9.2, the City shall not be liable for any obligations incurred by the Contractor. The Contractor shall not represent to any person that the City is liable for Contractor's obligations.

11.5 Administration of This Agreement. The City Clerk, or the designee of the City Clerk, or the head of any successor bureau or agency to which oversight of City cable franchises may be assigned during the term of this Agreement, is authorized to disseminate and to receive communications and notices regarding the Contractor's performance of this Agreement and the City's oversight thereof, to require information to be submitted under this Agreement, and to implement City directives with respect thereto.

11.6 Notice.

11.6.1 All notices provided under this Agreement shall be sufficient if mailed first class, postage prepaid, and addressed as follows,

(1) If to the Contractor: Executive Director, Milwaukee Access Telecommunications Authority, 2404 West Clybourn Street, Milwaukee, 53233:

(2) If to the City: City Clerk, 205 City Hall, 200 East Wells Street, Milwaukee WI 53202.

11.6.2 Notice of any change of address may be given by notice as provided in this Section.

11.7 Indemnity.

11.7.1 All local producers and users (not to include the Contractor, which is governed by Section 11.7.2) of any of the public and educational access facilities or channels shall agree in writing to hold harmless, defend, and indemnify the City and the City's officers, agents, and employees from any and all liability or other injury (including the reasonable cost of defending claims of litigation) arising from or in connection with failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright;

unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the City; and for any other injury or damage in law or equity, which claims result from the use of a public and educational access facility or channel.

- 11.7.2 Contractor and the City shall indemnify, defend, and hold harmless the other party, its officers, agents, and employees 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 any person, 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 the party, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement, or arising from or in connection with claims or loss or damage to persons 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 the use of channels, funds, equipment, facilities or staff granted under this Agreement or the Franchise Agreement.

12 EQUIPMENT AND FACILITIES.

- 12.1 Contractor shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or acquired with funds provided pursuant to this Agreement.
- 12.2 Contractor shall own all equipment and facilities acquired by it with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities acquired with funds received pursuant to this Agreement shall be subject to the provisions of Section 9.
- 12.3 To secure all of its obligations under this Agreement, Contractor hereby grants to City a security interest in all of the assets and interests, including but not limited to, Contractor deposit accounts, inventory and all equipment and fixtures hereafter acquired by Contractor with funds provided by the City. Contractor agrees to take all steps reasonably requested by City to perfect and enforce the City's security interest, including the execution and

processing of financing statements and continuation statements under the Uniform Commercial Code. Contractor will also notify any institution with which it now or hereafter maintains any deposit account containing the above funds of the existence of the City's security interest in the account.

- 12.4 The City agrees to subordinate its interest if necessary to finance the purchase of equipment or property. The subordination shall only be with respect to the specific equipment or property that Contractor might wish to finance.
- 12.5 To separately evidence and secure the grant set forth in Section 8.1.2, Contractor shall execute a note and mortgage to the City, in form satisfactory to the City Clerk, in the amount of the grant, without interest, payable only in the event of default and foreclosure during the term of the Agreement, and subordinate only to the previously recorded mortgage in favor of the City. Contractor shall not permit any other liens to be placed upon the Property without the express written consent of the City Clerk. If Contractor shall fully perform its obligations for the entire term of the Agreement, then at the expiration of the term such note and mortgage shall be deemed satisfied.
- 13 **NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.** Contractor shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap.
- 14 **EMERGING BUSINESS ENTERPRISE PARTICIPATION.** Contractor shall establish a plan for utilizing Emerging Business Enterprises ("EBE"), as EBE is defined in Section 360-01-10, MCO. The EBE plan shall set a spending goal of 18% per year, on a good faith, reasonable efforts basis, to be applied against Contractor's discretionary spending, as mutually agreed to by the Contractor and the City Clerk.
- 15 **INDEPENDENT CONTRACTOR.** It is understood and agreed that Contractor is an independent Contractor and that no relationship of principal/agent or employer/employee exists between the City and Contractor. If in the performance of this Agreement Contractor employs any third persons, such persons shall be entirely and exclusively under the control, direction and supervision of Contractor. All terms of employment, including hours, wages, working conditions, discipline, Contractor shall determine hiring and discharging or any other term of employment and the City shall have no right or authority over such persons or terms of employment.
- 16 **TIME.** Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

- 17 COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.
- 18 APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of Wisconsin. Each party retains all rights it may have at either law or equity.
- 19 INCORPORATION OF CHAPTER 99. Except as herein modified, all terms and conditions of Chapter 99, MCO, are incorporated herein by reference. Contractor agrees to comply with each provision of Chapter 99, MCO, which is applicable to Contractor.
- 20 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.

Executed at Milwaukee, Wisconsin this ____ day of _____, 2000.

CITY OF MILWAUKEE,

By:
Ronald D. Leonhardt, City Clerk
Date:

COUNTERSIGNED:

Comptroller
Date:

MILWAUKEE ACCESS TELECOMMUNICATIONS
AUTHORITY, INC.

By:
Vel Wiley, Executive Director
Date:

Approved as to content
this ____ day of _____

Deputy City Attorney

Approved as to form and execution
this ____ day of _____

Deputy City Attorney

EXHIBIT A

(Reference: Section 9.3)

**ASSETS ACQUIRED BY CONTRACTOR
PRIOR TO THE EFFECTIVE DATE OF THIS CONTRACT**

EXHIBIT B

(Reference: Section 8.1.1)

**REVISED SCHEDULE OF PAYMENTS PURSUANT TO SECTION 8.1.1 OF THE
ACCESS MANAGEMENT CONTRACT BETWEEN THE CITY OF MILWAUKEE AND
MATA COMMUNITY MEDIA, INC., AS AMENDED**

2008	February 15	\$125,000	2013	February 15	\$85,000
	May 15	90,000		May 15	125,000
	August 15	85,000		August 15	85,000
	November 15	125,000		November 15	125,000
2009	February 15	85,000	2014	February 15	85,000
	May 15	125,000		May 15	125,000
	August 15	90,000		August 15	90,000
	November 15	125,000		November 15	125,000
2010	February 15	85,000	2015	February 15	90,000
	May 15	125,000		May 15	125,000
	August 15	80,000		August 15	95,000
	November 15	125,000		November 15	125,000
2011	February 15	85,000	2016	February 15	95,000
	May 15	125,000		May 15	125,000
	August 15	85,000		August 15	95,000
	November 15	125,000		November 15	125,000
2012	February 15	85,000			
	May 15	125,000			
	August 15	85,000			
	November 15	125,000			