

**SEWER AUTHORITY MID-COASTSIDE**

Staff Report

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**Subject / Title**

Authorize Manager to approve MCTV Contract

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**Staff Recommendation:**

Authorize Manager to approve MCTV Contract

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**Fiscal Impact:**

Up to \$7,500 per year for 12 meetings; sufficient funds are available in both the FY2008-09 budget and the proposed FY2009-10 budget.

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**Discussion/Report:**

At their meeting of September 22, 2008, the SAM Board directed staff to bring to the November 2008 Board meeting a Request For Proposals for the Board to consider. In September 2008, the Board directed staff to use the services of MCTV to video record and cablecast SAM meetings. At the January 26 meeting, the SAM Board directed staff to negotiate an agreement with MCTV and bring that agreement back to the Board for approval. At the February 23, 2009 meeting, The Board directed staff to modify the agreement to include language in section 8 to include expected allowed uses, any form of distribution in accordance with the Public Records Act, including making copies of the DVDs, copy the file into other formats, copying or downloading from the SAM website.

In April, SAM received a letter from MCTV, which included, among other topics, language addressing the concerns expressed at the March 23, 2009 SAM Board Meeting regarding the fact that MCTV's policy on access to public meeting could be changed during the term of the agreement. MCTV has proposed language incorporated into section 8, which addresses this concern. Section 8 has been completely replaced with the suggested language, and the agreement is hereby provided for your review and approval.

The attached draft agreement has been reviewed by SAM Manager and General Counsel and by the MCTV President.

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**AGREEMENT BETWEEN SEWER AUTHORITY MID-COASTSIDE AND MID-COAST TELEVISION FOR VIDEO RECORDING AND DISSEMINATION OF MEETINGS**

This Agreement between the Sewer Authority Mid-Coastside (SAM) and Mid-Coast Television (MCTV), hereinafter referred to as the "Agreement", is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 for the purpose of engaging MCTV to video record the meetings of the Board of Directors of SAM, and SAM Committee meetings which immediately precede SAM Board meetings, and to make such video productions available to Coastside residents through cablecasting on the local community access cable channel and through webstreaming and video on demand over the Internet. In exchange for the compensation set forth herein, MCTV will provide the video production, cablecasting and internet services specified below.

For purposes of this Agreement, notices shall be provided to the parties using the following contact information:

**SAM:**

Written notice: John F. Foley III  
Manager  
Sewer Authority Mid-Coastside  
1000 N. Cabrillo Hwy.  
Half Moon Bay, CA 94019

Telephonic notice: (650) 726-0124

Email notice: [jack@samcleanswater.org](mailto:jack@samcleanswater.org)

**MCTV:**

Written notice: Constance Malach  
President  
MCTV  
P. O. Box 1750  
El Granada, CA 94018

Telephone notice: (650) 726-1750

Email notice: [connie@mctv.com](mailto:connie@mctv.com)

**A. Services to be Provided by MCTV**

MCTV will video record SAM Board Meetings which are normally scheduled for the fourth Monday of each month at 7:00 pm at the SAM offices, 1000 N. Cabrillo Highway, Half Moon Bay. MCTV will also video record SAM Committee meetings that immediately precede the SAM Board Meetings at the same location on the same day, which are normally scheduled at 6:00 pm. The SAM Board Meeting and SAM Committee meeting will be considered one single

meeting for production and programming purposes and will be referred to as the “SAM Board Meeting” for purposes of this agreement.

MCTV will also video record additional SAM meetings other than those described in the preceding paragraph on a case-by-case basis upon mutual agreement. The SAM Board Meeting and other SAM meetings will be referred to as “SAM meetings” for purposes of this agreement. For each such SAM meeting, MCTV will provide the following services to SAM:

1. MCTV will provide SAM with a DVD copy of the video program of each SAM meeting within three business days of the meeting.
2. MCTV will provide SAM with a digital data file of the video program of each SAM meeting within five business days of the meeting. MCTV can provide either an MPEG2 data file, or a Windows Media file copy of the program as requested by SAM
3. MCTV will cablecast each SAM meeting on the community access channel of the Comcast cable system two times. The first cablecast will be within one or two days of the SAM meeting. MCTV will also schedule a repeat showing of the meeting on a different day and time between 7 and 21 days following the meeting.
4. At the same time that MCTV cablecasts the SAM Board Meeting, it will webstream the meeting on its website, [mctv.com](http://mctv.com).
5. Following the initial cablecast of each SAM meeting, and within three days of the meeting date, MCTV will make the video available for video on demand viewing on the MCTV website.
6. MCTV will retain the SAM meeting videos on its website for no less than 1 year. MCTV will permanently retain a DVD copy of all SAM meetings that it records.
7. MCTV will “chapter” the uploaded video files of SAM meetings so that a visitor to the MCTV website can access the link to the portion of the video corresponding to a particular agenda item from the meeting. Chaptering on the MCTV website will be limited to the specific agenda items published on the public agenda of the meeting. To facilitate “chaptering” SAM agrees that the Meeting Chair will announce each agenda item by number prior to discussion of that agenda item by the Board Members. Matters discussed at a SAM meeting that are not itemized on the public agenda for the meeting and announced by the Chair will not be separately “chaptered” by MCTV.
8. Upon delivery to SAM, the DVD and Digital file copies of the SAM Board Meeting videos become the property of SAM, and become public records, as defined by the California Public Records Act. MCTV agrees and acknowledges that SAM may provide copies of the SAM Board Meeting videos when requested by a member of the public, including allowing the public to download meeting

videos from the SAM website, if SAM posts such meeting videos on its website. MCTV further agrees that during the term of this Agreement it will not rescind or alter its policy on access to public meeting videos (as adopted by the MCTV Board on April 21, 2008) as the policy relates to access to or use of SAM meeting videos produced by MCTV.

9. If SAM cancels a scheduled SAM meeting, it shall provide telephonic and email notice to MCTV no later than noon two business days before the originally scheduled date of the meeting. Notice shall be provided to MCTV by phone to 650-726-1750, and by email to [connie@mctv.com](mailto:connie@mctv.com). Failure to provide the required notice in a timely manner will require SAM to pay to MCTV the \$250 production charge for the cancelled meeting; all other charges for the cancelled meeting shall be excused.
10. If SAM changes the date or time of a SAM meeting, SAM shall give MCTV as the same advance notice, by telephone and email, as specified in Paragraph 9 above. In such a situation MCTV will use its best efforts to accommodate SAM and to video record the meeting. However, SAM acknowledges that MCTV is already committed to tape multiple other public agency meetings, and if the new date or time of the SAM meeting conflicts with other MCTV commitments to tape public meetings, and MCTV is unable to access sufficient staff or video equipment to video record the SAM meeting, MCTV shall not be required to video record and disseminate a meeting held at a date or time other than the regular meeting time for SAM meetings.
11. SAM and MCTV agree that video coverage of all SAM meetings will cease at 11:00 pm, and that SAM will use its best efforts to conclude its meetings by 11:00 pm. If a SAM meeting continues beyond 11:00 pm, SAM acknowledges that MCTV is not obligated to video record its meetings beyond 11:00 pm and no adjustment of the payment for services due from SAM to MCTV will be made due to MCTV's termination of video recording at 11:00 pm.

B. Payment by SAM for Services Provided by MCTV

1. Pursuant to this Agreement, for each SAM meeting video recorded by MCTV, SAM agrees to pay MCTV the following fees for the video production, cablecasting and video internet services described in Section A. above:

Production for video recording a single SAM meeting - \$250 per meeting  
Two cablecast playbacks of the meeting on MCTV's community access channel - \$75 per meeting  
Duplication and delivery of the meeting video recording onto a DVD - \$50 per copy  
Duplication and delivery of the video recording onto digital media - \$50 per copy

Encoding the meeting video recording onto the MCTV server for webstreaming and video on demand, plus all related scheduling and archiving services - \$100 per meeting

Creation of chapters within the digital file of the meeting video recording- \$100 per meeting

2. The resulting total payment for each four hour meeting is \$625. This payment schedule assumes a four hour meeting (including a SAM Committee meeting, if any). If the duration of the SAM meeting exceeds four hours, there will be an additional charge of \$100 resulting in a total payment by SAM to MCTV of \$725 for each meeting lasting between 4-5 hours.
3. MCTV will not charge SAM any additional charges for travel, postage, or delivery costs related to the services described in this Agreement. MCTV shall not charge SAM for any out of pocket costs other than the charges listed in the cost breakdown above. Notwithstanding the preceding sentence, if MCTV obtains portable data storage devices for delivering digital data files to SAM, SAM shall return each such device after downloading the digital files, and SAM agrees to pay for the cost of replacing any such devices that are lost or damaged by SAM.
4. SAM shall remit the required payment to MCTV for each SAM meeting video recorded and disseminated by MCTV within 30 days of the date of the meeting, including payment for a meeting that was cancelled and for which timely notice was not provided.

C. Other Terms and Conditions for the Services to be Provided by MCTV to SAM

1. MCTV will use its best efforts to produce, cablecast and webstream the SAM meeting videos in broadcast quality video and audio. MCTV's automated playback system is configured so that it will cease the cablecasting of any program that lacks a continuous video or audio signal (a "drop out"). If any SAM program contains a video or audio drop out such that it cannot be shown on MCTV for lack of a video or audio signal for a period exceeding 30 minutes, SAM will not be obligated to pay MCTV for any services associated with that meeting, and MCTV will not be obligated to provide any of the deliverables specified in Sections A.1.-5. above for said meeting. If MCTV identifies a quality defect or drop out in the video or audio signal of a SAM meeting video and is able to remedy the defect and cablecast the video without a video or audio signal drop out within 48 hours of the originally scheduled playback time, SAM's payment obligations shall not be excused.
2. If, notwithstanding the fact that an MCTV video of a SAM meeting contained video and audio signals sufficient for it to be cablecast on MCTV's playback equipment, SAM's Manager notifies MCTV in writing or by email that SAM believes that the video or audio quality of a SAM meeting video was inadequate

to reasonably enable a viewer to see and hear the video on the cable channel, MCTV will review the video in question. If after such review MCTV, in its sole discretion, concludes that the quality of the audio or video signal for greater than 50% of the length of the meeting was inadequate to reasonably enable a viewer to see and hear the video on the cable channel, MCTV will so notify SAM, and SAM will not be obligated to pay for the video services, as set forth in paragraph 1. above. Otherwise SAM's payment obligations will not be altered in this circumstance.

- 3. Any claim of a quality defect in an MCTV video of a SAM meeting must be transmitted by SAM's Manager to MCTV as set forth in paragraph 2. within 60 days of the initial cablecast of the SAM meeting or the provisions of paragraphs 1. and 2. will not apply and SAM's payment obligation will not be altered.
- 4. Either SAM or MCTV may terminate this agreement for video production, cablecasting and internet video services 60 days after providing written notice to the other party.
- 5. This Agreement shall constitute the entire agreement between the parties. In the event of a dispute between the parties, the interpretation of this Agreement shall be governed by the laws of the State of California.

Agreed to by:

\_\_\_\_\_ Title \_\_\_\_\_ for Mid-Coast Television

Date \_\_\_\_\_, 2009

Agreed to by:

\_\_\_\_\_ Title \_\_\_\_\_ for Sewer Authority Mid-Coastside

Date \_\_\_\_\_, 2009

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## **Mid-Coast Television**

525A Obispo Road  
P. O. Box 1750  
El Granada, CA 94018

April 15, 2009

John F. Foley III  
General Manager  
Sewer Authority Mid-Coastside  
1000 N. Cabrillo Hwy.  
Half Moon Bay, CA 94019

Re: Status of Agreement between Sewer Authority Mid-Coastside and Mid-Coast Television for cablecasting and webstreaming of videos of District meetings

Dear Mr. Foley:

Mid-Coast Television (MCTV) submits this letter to facilitate the finalization of an Agreement between MCTV and Sewer Authority Mid-Coastside (SAM) as directed by the SAM Board at its January 26, 2009 meeting. It is important that SAM focus on approving final contract terms and not attempt a reconsideration of the decision to select MCTV as the meeting video provider. At the most recent SAM meeting held March 23, 2009, there was an inaccurate and confused discussion of the Board's action to date and the SAM attorney did not correct the misstatements made during that discussion. Having reviewed the videotapes of the January 26, 2009 meeting, it is clear that the SAM Board voted 7-0, with one abstention, to "approve MCTV" as the entity to videotape SAM meetings. The specific motion for approval of MCTV as the video contractor was amended prior to the vote to require that SAM Management negotiate a contract with MCTV and bring the contract back to the SAM Board for approval of the specific terms of the contract. In addition, the motion was amended to require that the agreement include a provision to provide for refunds of fees paid to tape meetings if the meeting videos are not of sufficient technical quality to watch, and to include a provision contracting with MCTV to videotape and cablecast SAM subcommittee meetings that were not included within the scope of the original RFP. The discussion of the motion reflected the common understanding of several Board members, plus SAM management, that the contract would be brought back to the SAM Board for approval of the specific terms, but there was nothing in the discussion of the motion that referred to or contemplated revisiting the award of the cablecasting agreement to MCTV. The Board reserved only the right to engage in a procedural review of the contract terms.

MCTV did negotiate a contract with you, as General Manager on behalf of SAM, and presented it at the Board meeting of February 23, 2009. At that time, issues were raised regarding Paragraph 8 of the Agreement and Director Lohman asked that SAM Management and MCTV revisit the agreement and consider adding language specifically addressing the issue of allowing the videos to be downloaded from the SAM website. MCTV proposed adding language to Paragraph 8 that precisely matches the language used by Director Lohman to explain the

changes he sought. MCTV still believes that this language is both appropriate and fair, and asks that SAM approve the Agreement with that language in the Agreement.

In response to comments directed toward the adequacy of the proposed language in Paragraph 8 at both the February 23<sup>rd</sup> and March 23<sup>rd</sup> SAM meetings, MCTV wishes to point out that its current policy on the use of public meeting videos makes it possible for any one to access and retransmit MCTV public meeting videos. See the MCTV policy set forth in Attachment A. MCTV imposes no restriction on any party making “fair use” of public meeting videos. As noted at the last meeting, this concept has been difficult for courts to define, but in the case of MCTV public meeting videos, it is not necessary to reach a precise definition. MCTV does not restrict the retransmission of public meeting videos on other websites whether or not the use is a “fair use”. MCTV only asks that websites showing such videos give credit to those who produced the video, provide a link to the full video on the MCTV website (or another website such as SAM’s), and provide a disclaimer regarding editorial content if the video clip is shown with editorial comments. MCTV believes that SAM should also request these steps be followed if anyone were to take a video of a SAM meeting from its website and retransmit it on another website. After a period of time in which they did not follow this practice, the authors of certain local blogs are now giving attribution to sources they copy from other local media, so this can hardly be claimed to be a restrictive or unfair requirement. MCTV’s liberal policy on the use of public meeting videos means that the identity of the copyright holder is irrelevant for purposes of public access to the videos. Under the language proposed in Paragraph 8, the digital and DVD copies of a SAM meeting provided to SAM by MCTV would be SAM’s property, and under the Public Records Act, anyone could obtain a copy of the videos from SAM. MCTV’s retention of the copyright of the meeting video does not alter the rights of citizens to obtain the video under the Public Records Act in any way.

If the SAM Board believes that it would facilitate approval of the proposed Agreement, MCTV is willing to add additional language to Paragraph 8 stating that so long as the MCTV-SAM Agreement remains in effect MCTV will not rescind or alter its policy on access to public meeting videos (as set forth in Attachment A) as the policy relates to SAM meeting videos. This language would effectively eliminate any possible risk of MCTV altering its policy and seeking to limit access to SAM meeting videos in the future, effectively addressing the concerns raised by a SAM Board member. For your convenience, we enclose in Attachment C proposed text to replace the text in Paragraph 8. We believe that the version of the Agreement attached to your March 23, 2009 Staff Report (Item 6C) is in all other respects in compliance with the direction of the SAM Board, including the issue of refunds for technically deficient videos. Accordingly, we propose that you prepare a final agreement for consideration of the Board that inserts the text from Attachment C in place of the language in Paragraph 8 of the Agreement submitted to the Board on March 23, 2009.

We also wish to address several other issues raised by SAM Board members in recent meetings that we have attended. Mention was made of the cost of the taping fees and statements of one Board member implied that the fees were excessive. This is not true. We have surveyed the other public access video channels in the County and their fees for taping meetings are greater than the fees proposed by MCTV. MCTV’s fees for making DVD copies of videos are in the middle of the range of fees charged by other access stations. See Attachment B to this letter.

The example was raised at the last meeting that someone can make a copy of a meeting video for just the few dollars that it costs to buy a blank DVD. That is true if someone volunteers the time to do it and already owns the equipment. However, access channels have to generate revenues to cover any costs that are not paid for by the limited franchise fee revenue allocated to them by franchising government bodies. They have to cover overhead and staffing costs, as well as the costs of purchasing, maintaining, repairing and eventually replacing the equipment used to tape meetings, cablecast them, and make copies of programs. This cannot be done for \$2.00 a copy. Nor can a video crew be provided for a four hour shoot without significant compensation. If any Coastside agency attempted to contract with a commercial video production company for meeting taping services the cost would be many multiples of the fees proposed by MCTV. As shown in the Attachment B, all access stations charge fees to assist in recovering their costs, and MCTV's fees for public meetings and related services are very reasonable in comparison to other access channels. SAM should not expect to receive the services set forth in the proposed Agreement for less than the fees stated in the Agreement.

We also wish to confirm that on the occasions that you reported to MCTV that the audio of a SAM meeting being cablecast was not adequate, we immediately checked the signal being cablecast on Channel 6, and in each case, the audio signal as received on Channel 6 was quite satisfactory and comparable to the other commercial programs on surrounding channels.

In summary, MCTV is still willing to reach agreement with SAM under the terms we have proposed, which we believe are entirely reasonable. At this point, SAM may choose one of two courses: SAM can approve the proposed amended Agreement, or SAM could request that MCTV continue to tape the SAM meetings under the same conditions and for the same fees as are currently paid by SAM without a formal agreement. Frankly, no formal agreement is strictly necessary, as MCTV does not have a formal agreement with the City Council, or several of the other agencies whose meetings are taped by MCTV.

MCTV has welcomed the opportunity to provide services to SAM. We have expended many hours drafting and redrafting an agreement that meets the directives of your Board. Our Executive director and our Attorney have attended every meeting since December 2008 to be available to answer questions of your Board. Our camera and post production crew have reliably videotaped and cablecast each of the meetings as requested and delivered the DVD's to your office in a timely fashion. In addition, we have recently received phone calls from residents of the Coastside inquiring about the SAM coverage and this leads us to believe that the public appreciates the opportunity to see the meetings on Channel 6. The community is getting used to a regular schedule for cablecasts of SAM meetings. For these reasons we strongly believe that SAM should reach a decision to approve the Agreement at your April meeting. MCTV must deal with many other PEG issues that demand our attention both on a local and National level. We are a small non-profit agency and, as I am sure you appreciate, our staff time is as valuable as money. We trust SAM will consider its responsibility to the Coastside viewers who watch its meetings and its obligation to finalize the RFP contracting process in a timely and reasonable manner and conclude that it should move to approve this Agreement at the April 27<sup>th</sup> meeting.

It is important to point out that the RFP contains no provisions permitting SAM to reopen the solicitation to allow any of the competing parties to rebid or modify their bid after having

submitted a last and final proposal under the terms of the RFP. As Board members discussed at the last meeting, should SAM deviate from the stated procedures in the RFP in selecting the approved video contractor, it could expose SAM to liability. Rebidding or resubmission of proposals would grant an unfair advantage to the party who was not selected as the preferred bidder in the original solicitation, and discriminate against the party who followed the required procedures and was duly awarded the contract.

Please contact me at your earliest convenience if you have any questions regarding our proposed language for the agreement. Once you have prepared an amended Agreement we would like to proofread it one more time prior to the next SAM Board meeting. Thank you for your cooperation.

Very truly yours,

*/s/ Constance J. Malach*

Constance J. Malach  
MCTV President

Attachments

## ATTACHMENT A

### MCTV POLICY FOR ACCESS TO PUBLIC MEETING VIDEOS

Approved by the MCTV Board of Directors 4-21-2008

Third parties may use one of three methods to access and copy videos of public meetings produced by MCTV on their own websites:

1. The videos may be videotaped when cablecast on Channel 6.
2. The third party website may provide a link to the MCTV website to access the video.
3. The third party may use its own software to download and capture the MCTV produced-public meeting video for redistribution on its own website.

MCTV will not impose any charge for a third party's use of MCTV-produced public meeting videos if the third party meets the following requirements in redistributing the MCTV programming:

1. On the webpage where all or a portion of MCTV-produced public meeting video is shown, it must appear in an unaltered and unedited state (including the MCTV "bug" on the screen) and the words "Video provided by MCTV" must appear immediately adjacent to the video images.
2. If any editorial content accompanies the webpage or website, a disclaimer must appear on the same page as the MCTV-produced video content stating, "The opinions expressed on this page/website [as applicable] are those of the author, and do not represent the views of MCTV or its management."
3. At some place on the same webpage as the MCTV-produced public meeting video, a link to the MCTV website enabling the viewer to access the entire public meeting must appear.

These policies only apply to MCTV-produced public meeting videos. No other MCTV programming or independently produced video programming cablecast or webstreamed by MCTV may be copied, used, or redistributed by any other person without express written permission granted in advance.

If you have any questions, please contact MCTV at 650-726-1750 or email [mctv@comcast.net](mailto:mctv@comcast.net).

## ATTACHMENT B

### **MCTV's charges for public meeting taping are very reasonable in comparison to rates charged by other Access Providers in San Mateo County**

MCTV's current rate schedule:

Production fee for taping a public meeting (4 hours or less): \$250 per meeting  
Plus cablecast playback of meeting on MCTV: \$75  
TOTAL \$325 for taping and cablecasting

Duplication of meeting video onto DVD format or digital file: \$50 per copy

Encoding meeting video onto MCTV server for Video-on-Demand playback: \$100 per meeting  
Chaptering segments of meeting by agenda item: \$100 per meeting

#### Mid-Peninsula Media Center, Palo Alto

Mid-Peninsula charges \$114.71 per hour for taping public meetings, including the use of the Center's camera equipment. For a four hour meeting, this amounts to a charge of \$458.84 compared to the MCTV charge of \$325 for taping and cablecasting. Mid-Peninsula's charges do not include the service of webstreaming meeting videos or making them available for video on demand viewing.

The Center charges \$22.94 per hour plus \$5 per copy for tape or DVD copies of programs. Thus, a copy of a four hour program would cost \$96.76 compared to \$50 for MCTV.

#### Millbrae Community TV, Millbrae, CA

Millbrae charges between \$700 - \$900 for taping a meeting at a remote location and cablecasting the video, compared to the \$325 charged by MCTV. No Video on Demand, webstreaming or chaptering is provided

Millbrae charges \$25 per copy of a DVD.

#### Pacifica Community TV, Pacifica, CA

Pacifica Community TV does not tape any public meetings except those of the Pacifica City Council. Pacifica Community TV is paid an annual fee of \$50,000 a year to tape and cablecast these meetings over and above any franchise fee revenues. This is substantially more than the fees charged by MCTV.

CreaTV, San Jose, CA

The Operations Manager of CreaTV states that \$600 is charged for a remote production of less than four hours in length (including cablecasting) compared to the \$375 charged by MCTV. No webstreaming, video on demand or chaptering is provided.

CreaTV charges \$25 for a copy of a DVD.

Montara Fog:

For the most recent SAM meeting, which lasted a total of five hours, according to its Response to the SAM RFP, Montara Fog would have charged \$695, compared to the \$675 charged by MCTV. In addition, MCTV's fee included two showings of the meeting on the community access channel. Cablecasting is not included in the services available from Montara Fog.

## **ATTACHMENT C**

### **PROPOSED REPLACEMENT LANGUAGE FOR PARAGRAPH 8**

8. Upon delivery to SAM, the DVD and Digital file copies of the SAM Board Meeting videos become the property of SAM, and become public records, as defined by the California Public Records Act. MCTV agrees and acknowledges that SAM may provide copies of the SAM Board Meeting videos when requested by a member of the public, including allowing the public to download meeting videos from the SAM website, if SAM posts such meeting videos on its website. MCTV further agrees that during the term of this Agreement it will not rescind or alter its policy on access to public meeting videos (as adopted by the MCTV Board on April 21, 2008) as the policy relates to access to or use of SAM meeting videos produced by MCTV.