

CONTRACT BETWEEN CITY OF _____
AND
COMMUNITY MEDIA CENTER OF _____, INC.

AGREEMENT

This Agreement is made this ___ day of _____, 20___, by and between the City of _____, a municipal corporation ("City"), and Community Media Center of _____, Inc., a nonprofit corporation ("CMC"), who agree as follows:

RECITALS

1. The City desires to provide support for the use of cable television public, educational, and government ("PEG") access channels provided pursuant to federal law.
2. The City has granted a franchise to _____ (Cable Company) to operate a cable television system in the City.
3. The _____ Ordinance and the franchise agreement between the City and (Cable Company) indicates that the City shall designate a non-profit access management entity to operate and administer the PEG access facilities, services and programming.
4. The franchise agreement with (Cable Company) provides that certain channel capacity be provided for PEG access.
5. The franchise agreement with (Cable Company) provides that certain initial and ongoing payments shall be made by (Cable Company) for PEG access capital equipment and facilities.

6. The franchise agreement with (Cable Company) provides that certain payments and in-kind services shall be provided by (Cable Company) to support the operations of the PEG access facilities, equipment and channels.
7. The City has determined that it will provide support for PEG access through the dedication of _____ percent (____%) of its franchise fees to said purposes.
8. The City has determined that it will provide physical space located at _____ in which the media center may be constructed and operated.
9. (CMC), as the access management entity designated by the City, has indicated its interest in serving the community by providing PEG access programming and services.

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

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the City to (CMC), pursuant to this Agreement, (CMC) shall provide the following services:

- A. *OPERATE PUBLIC ACCESS CABLE CHANNEL(S).* Operate the public access cable channel(s) for public/community access programming purposes in a manner which is consistent with the principles set forth in the _____ Ordinance (No. _____), with the primary purpose being to administer, coordinate, and assist those requesting access on a non-discriminatory basis.

- B. *OPERATE THE EDUCATIONAL AND GOVERNMENT ACCESS CHANNELS.* Operate the educational and government access channel(s) for community access programming purposes in a manner which is consistent with the principles set forth in the _____ Ordinance (No. _____), with the primary purpose being to administer, coordinate and assist the City of _____ (government access) and educational institutions (educational access) requesting access on a non-discriminatory basis.
- C. *OPERATE A COMMUNITY MEDIA CENTER.* Manage a video production facility and equipment, available for public use at such hours and times as are determined by (CMC). Access to equipment and facilities shall be open to all those who satisfactorily complete training class(es) provided by (CMC) or who receive a certification from the (CMC), identifying said user(s) as having satisfied training requirements through means other than (CMC) training classes.
- D. *PROVIDE EQUAL ACCESS.* Provide access to the use of the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first-served non-discriminatory basis, pursuant to operating rules promulgated by (CMC) and consistent with the principles set forth in the _____ Ordinance (No. _____).
- E. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel(s) and file such policies and procedures with the City.

- F. *COMPLIANCE WITH LAWS RULES, AND REGULATIONS.* Administer the PEG access channel(s) and facilities in compliance with applicable laws, rules, regulations, and in compliance with the _____ Ordinance (No. _____) and the franchise agreement between the City and (Cable Company).
- G. *TRAINING.* Train City residents, and when requested, City and school or college employees in the techniques of video production, and provide technical advise in the execution of productions.
- H. *PLAYBACK/CABLECAST.* Provide for the playback/cablecasting of programs on the PEG access channel(s). Within twelve months of the completion and opening of the media center, (CMC) shall cablecast an average of _____ hours of local original, replayed and outside programming per week.
- I. *MAINTENANCE OF EQUIPMENT.* Provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned, or leased to (CMC) by the City.
- J. *SPECIAL NEEDS GROUPS.* Support special needs groups, including but not limited to the hearing impaired, in program production through training and other means.
- K. *PROMOTION.* Actively promote the use and benefit of the PEG access channel(s) and facilities to cable subscribers, the public, PEG access users, and (Cable Company).

- L. *PERFORMANCE REVIEW.* (CMC) shall, after _____ years of operation under this Agreement, contract with an entity expert in community media from outside the _____ community that is expert in PEG access matters to conduct a performance review of (CMC)'s operations. This review shall include an opportunity for PEG access users and cable subscribers to provide input. Upon completion, a copy of the performance review shall be submitted to the City.

- M. *OTHER ACTIVITIES.* Undertake other PEG access programming activities and services as deemed appropriate by (CMC) and consistent with the obligation to facilitate and promote community media programming and provide non-discriminatory access.

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

SECTION 3. INDEMNIFICATION. (CMC) shall indemnify, defend, and hold harmless the City, its officers, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, 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 (CMC), its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

(CMC) shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person 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 (CMC) use of channels, funds, equipment, facilities or staff granted under this Agreement or the franchise agreement.

The City shall indemnify, defend, and hold harmless (CMC), its officers, agents and employees from and against any and all claims, losses, liabilities, or damage including payment of reasonable attorneys' fees arising out of or resulting from the performance of this Agreement, caused in whole or part by any act or omission of the City.

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

SECTION 5. COPYRIGHT AND OWNERSHIP. (CMC) shall own the copyright of any programs which it may choose from time to time to produce. Copyright of programming produced by the public shall be held by such person(s) who produces said programming.

SECTION 6. DISTRIBUTION RIGHTS.

- A. (CMC) shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures.

- B. At least at the beginning and end of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, (CMC) shall display a credit stating "Partial funding for the operation of this channel is provided by the City of _____." Such credit shall also state that opinions expressed in PEG access programs are the sole responsibility of the program producers.

SECTION 7. EQUIPMENT AND FACILITIES.

- A. (CMC) shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement.
- B. (CMC) shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the City.

To secure all of its obligations under this Agreement, (CMC) hereby grants to City a security interest in all of the assets and interests owned or hereafter acquired by (CMC) with funds provided by the City, and the proceeds thereof, including but not limited to, (CMC) deposit accounts and inventory, and all equipment and fixtures, that are or were acquired with funds provided by the City. (CMC) 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. (CMC) will also notify any institution with whom it now or hereafter maintains any deposit account of the existence of the City's security interest in the account.

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 (CMC) might wish to finance.

- C. Upon the dissolution of the (CMC), it shall, subject to the approval of the City, transfer all assets of (CMC) representing City-funded equipment and facilities, and/or the proceeds of either to the City, or at the City's option, to such organization or organizations designated by the City to manage access which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).

SECTION 8. INSURANCE. (CMC) shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by (CMC) and may be included in (CMC) annual budget.

- A. *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.

- B. *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.

- C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability with limits as required by (State) law with an insurance carrier satisfactory to the City.

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

- E. *CITY AS CO-INSURED OR ADDITIONAL INSURED.* The City shall be named as an co-insured or additional insured on all aforementioned insurance coverages. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or (CMC) 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 (CMC) insurance and shall not contribute to it.

- F. *NOTIFICATION OF COVERAGE.* (CMC) shall file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation upon commencement of the employment of the Executive Director; (2) equipment insurance upon the acquisition of any equipment; (3) cablecaster's error and omission insurance within thirty (30) days of the commencement of cablecasting of programming on the designated access channel.

SECTION 9. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

- A. (CMC) 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.
- B. Grantee shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual preference, marital status, an ancestry, national origin or physical or mental handicap.

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

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

SECTION 12. ANNUAL REPORTS. Prior to March 15 of each year, (CMC) shall submit to City an annual report for the preceding fiscal year (January 1 - December 31). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and services provided;
- B. Current and complete listing of Grantees' Board of Directors;
- C. Year-end financial statements audited by an independent certified public accountant.

SECTION 13. RECORDS, FISCAL AUDIT.

- A. (CMC) shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, (CMC) shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.
- C. (CMC) shall prepare (or have prepared) and submit to the City a fiscal audit by a certified public accountant, at least every three (3) years.

SECTION 14. FUNDING AND OTHER RESOURCES. The City agrees to make the following funds and resources available to (CMC):

- A. (Cable Company) has dedicated certain channel capacity (spectrum on the cable system) for PEG access use. The City agrees to permit (CMC) to manage that channel capacity for PEG access programming purposes.

- B. Funding for PEG Access Facilities and Equipment.
 - 1. In accordance with the franchise agreement, (Cable Company) shall provide \$_____ to the City for the construction/renovation of a community media facility and purchase of an equipment package.

 - 2. In accordance with the franchise agreement, (Cable Company) shall also provide ongoing funding to the City, equivalent to _____ cents (____¢) per subscriber per month, for replacement and/or additional PEG access equipment.

 - 3. The City agrees to provide to (CMC) all funds that it receives from (Cable Company) for PEG access equipment purposes. (CMC) shall utilize such funds for the purchase of equipment to be used for the purposes delineated in this Agreement. The transfer of these funds to (CMC) shall be executed upon thirty (30) days written notice by (CMC) to the City requesting the funds. Funds may not be claimed by (CMC) until such funds are received from (Cable Company) per the franchise agreement.

C. Funding for PEG Access Services.

1. The City shall provide (CMC) _____ percent (___%) of the franchise fees paid to the City by (Cable Company). These funds shall be held in a special account by the City, designated "Cable Public, Educational, and Government (PEG) Access Support Fund" available only to support PEG access as designated under this Agreement, and shall be available to support the PEG access services described previously in the "Scope of Services" of this Agreement. These funds shall be disbursed to (CMC) on a quarterly basis, in accordance with the timeline specified in Section 17 of this Agreement.
2. (Cable Company) has agreed to provide ongoing funding to (CMC), equivalent to _____ cents (___¢) per subscriber per month, for additional support of PEG access services. These funds shall be disbursed to (CMC) on a quarterly basis.

D. The City agrees to provide space in _____ for use as a community media facility. The specific space to be provided shall be adequate to meet the square footage requirements and ceiling height requirements for media production and shall be mutually agreed upon between the City and (CMC). This space shall be provided free of any rent and utility charges.

E. The City agrees to provide temporary office space to (CMC) at _____ or another mutually agreeable City-owned facility until such time as the construction of the community media facility is completed.

SECTION 15. ANNUAL PLAN AND BUDGET.

- A. On or before August 15th of each year in which this Agreement is in effect, City shall provide (CMC) with an estimate of the funds (___% of the franchise fees) that will be available to (CMC) for the upcoming fiscal year. As used herein, the fiscal year begins on January 1 and ends on December 31.

- B. On or before September 30 of each year in which this Agreement is in effect, (CMC) shall provide to the City an Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds and channel(s) received from the City. Such plan shall contain:
 - 1. A statement of anticipated number of hours of local original PEG access programming;
 - 2. Training classes to be offered and frequency of classes;
 - 3. Other access activities planned by (CMC); and
 - 4. A detailed operating and capital equipment and facilities budget.

SECTION 16. EXPENDITURE OF FUNDS. (CMC) shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and Section 1 (Scope of Services) of this Agreement. Funds not expended in the year covered by the Annual Budget and Activities Plan may be carried over by (CMC) into succeeding years. Upon termination of this Agreement all funds of any kind received from City and not expended by (CMC) shall be returned to City. (CMC) shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 17. RECEIPT OF APPROVED FUNDING. For each year in which Grantee has submitted the Annual Access Activities Plan and Budget to the City as required under Section 15 of this Agreement, City shall make quarterly payments to (CMC). Those payments shall be made on or before February 15, May 15, August 15, and November 15. The payments to (CMC) shall reflect an amount equal to _____ percent (___%) of the franchise fee payment received from (Cable Company).

SECTION 18. FUNDING FROM OTHER SOURCES. (CMC) may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities.

SECTION 19. TERM OF AGREEMENT. This Agreement shall be for a period of five (5) years commencing on _____ and ending on _____ unless terminated earlier, as provided in this Agreement. This Agreement may be extended, by mutual agreement of the City and (CMC), in writing, for two additional periods of five (5) years each in accordance with Section 21 of this Agreement.

SECTION 20. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. The City shall have the right upon one hundred twenty (120) days written notice to (CMC) to terminate this Agreement for:
1. Breach of any provision of this Agreement by (CMC);
 2. Malfeasance, misfeasance, misappropriation of public funds; or
 3. Loss of 501(c)(3) status by (CMC).

- B. (CMC) may avoid termination by curing any such breach to the satisfaction of the City within one hundred twenty (120) days of notification or within a time frame agreed to by the City and (CMC). The City may also terminate this Agreement at the expiration of its term, or any extension thereof.
- C. Upon termination of this Agreement, (CMC) shall immediately transfer to the City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by (CMC) with funds received pursuant to this Agreement.

SECTION 21. EXTENSION OF AGREEMENT. This Agreement may be renewed or extended for additional periods of five (5) years each, pursuant to the following process:

- A. If (CMC) seeks an extension of this Agreement it shall on or before July 1, _____, and on or before July 1, _____ (if the Agreement is extended in _____), submit to the City a letter of intent requesting extension.
- B. On or before October 1, _____, the City shall respond to (CMC) letter of intent to request extension. If the City intends to refuse to extend the Agreement, it shall explain the reasons for this decision in its response to (CMC). The City may not refuse to extend the contract based upon a failure of (CMC) to comply with the terms of this Agreement unless the City has provided (CMC) a notice of its failure to comply with the terms and the opportunity to cure said noncompliance.

SECTION 22. TIME. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 23. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 24. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of _____.

SECTION 25. NOTICES. All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To City of _____:

To (CMC):

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

SECTION 26. 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.

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

CITY OF _____,
a municipal corporation

By:

Date:

COMMUNITY MEDIA CENTER OF _____, INC.
a nonprofit corporation

By:

Date: