

#7
9/30/04

AUSTIN MUSIC CHANNEL OPERATING AGREEMENT

THIS OPERATING AGREEMENT dated October 1, 2004 is entered into between the CITY OF AUSTIN ("City"), and the Austin Music Partners, Inc., a Texas corporation ("Contractor" or AMP):

WHEREAS, the City is committed to promoting Austin's music culture as witnessed by the establishment of the Austin Music Network in 1994, the music programs of the Austin Convention and Visitors Bureau, and the Austin Music Commission to coordinate and recommend policies that help showcase local music venues and local musicians, and stimulate related economic development.

WHEREAS, pursuant to these policies, the City instituted an economic development project known as the "Austin Music Network" (AMN) to showcase local music, ~~and local musicians, and local music venues;~~ and

WHEREAS, the City granted Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN") and Grande Communications, Inc. ("Grande") (Collectively "Cable Operators") franchises to provide cable service within the City and it was mutually agreed, pursuant to Cable Operators' respective franchise agreements with the City, that Cable Operators would make available on their cable systems channels for the exhibition of programming concerning Austin music; and

WHEREAS, the City desires that these channels provide programming which is of value to Cable Operators' customers; and

WHEREAS, the City has operated and financially supported the Austin Music Channel since its inception, and

WHEREAS, the City desires to have the Austin Music Channel operated on a self supporting basis, and

WHEREAS, the parties to the franchise agreements above, agree as provided therein that AMP will be allowed to sell commercial advertising time on the Austin Music Channel beginning on or before February 1, 2005 and continuing throughout the remaining term of this Agreement, and

WHEREAS, AMP has proposed to operate the Austin Music Channel as a commercial venture, exclusive of any governmental support, subject to its "Local Programming Commitment" as described herein.

NOW THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS**

As used herein, the following terms have the meanings indicated:

“Archives” or “Video Archives” means a collection of Videos owned by the City, regardless of their current physical location, that are housed permanently in the City’s History Library.

“Austin Music Partners (AMP)” means a Texas corporation formed to operate the Austin Music Channel. It is a private for-profit corporation.

“Channel” or “Music Channel” or Austin Music Channel” means that portion of the electromagnetic spectrum on Cable Operators' cable systems that is specifically dedicated to the City’s music network.

“City” means the City of Austin, Texas, a home-rule municipal corporation under the laws of the state of Texas.

“Contract Administrator” means an individual designated by the City, directly responsible for the administration and enforcement of this Agreement.

“Contractor” or “AMP” means Austin Music Partners, Inc., a Texas for-profit corporation committed to promoting Austin music through operation of the Austin Music Channel.

“Franchises” means the cable franchises granted by the City to Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN) pursuant to Ordinance No. 960613-A and to Grande Communications, Inc. pursuant to Ordinance No. 000420-28. Those Sections contained in the franchise agreements specific to this agreement include the following (the “Channel-Related Provisions”):

6.5. Grantee believes there is significant interest on the part of its customers in locally based music. Grantee intends to make available one full-time channel for the exhibition of programming concerning Austin music. Grantee intends to include in its program offering, a channel dedicated to local music throughout the full term of the franchise, provided quality programming is available and customer interest continues.

6.5.1. Grantee does not intend to undertake any obligation to produce such programming itself, but rather the administration of this channel shall be performed by the City or its designee. Nothing herein shall prevent Grantee,

the City, or the channel's programmer from selling commercial advertising time on this channel as agreed by the parties.

- 6.5.2. During the period that Grantee provides such channel, the maximum number of PEG Access Channels shall be reduced by one.

"Local Area" means the Austin Designated Market Area ("DMA") for the Austin broadcast market as defined as of the execution date of this contract, which-and includes the following counties: Travis, Hayes, Williamson, Bastrop, Lee, Fayette, Caldwell, Blanco, Gillespie, Mason, Llano, and Burnet. It does not include the San Antonio Designated Market Area, which is also listed on Exhibit C. The DMA also includes the cities that will receive the Music Channel via the Austin division of TWEAN, as listed in Exhibit C.

"Local Artist" means anyone who lives or performs in venues located in Austin's Designated Market Area (DMA).

"Local Entertainment" means musical performances and other arts-related activities occurring in the Local Area.

"Local Music" means a musical performance by a Local Artist.

"Local Programming Commitment" means that Section included in the AMP Proposal to the City which sets forth the programming commitment that will meet the City's original goals of supporting and promoting local and regional music, arts and entertainment and related economic development.

"Material Terms" means the requirements set forth in Sections 3., 4., 5., 6., 7., 8., 9., 10., 11., 12., 13., 14., 15., and 16.

"Network" or "network" means AMP's video programming service to air on the Channel in accordance with this Agreement.

"Operating Activities" means those which are the subject of this Agreement consisting of and relating to 1) programming the Music Channel with local and regional music, arts and related entertainment 2) producing and airing on the Austin Music Channel taped videos, 3) highlighting on the Austin Music Channel the City's numerous entertainment attractions, 4) managing all aspects of the Music Channel, 5) expanding the Music Channel's live/taped programming and viewer coverage, 6) generating sufficient revenue to operate the Music Channel without subsidies from governmental sources.

“Proposal” means AMP’s proposal for operation of the Music Channel 15. It is incorporated herein as Exhibit A for reference purposes.

“Subscriber” means a person to whom the products or broadcasts of the AMP are distributed, whether in video or audio form, by any media.

“Systems” means the cable television systems or groups of cable television systems (whether designated as divisions or otherwise) operated by Cable Operators or their affiliates in the Austin, Texas, area and any other cable television systems interconnected with Cable Operators’ systems.

“Video Product” or “Video” means a segment of any length, capable of being transmitted as a television signal or through other media, concerning or featuring (i) live music performed in the Austin area and/or (ii) music written, performed or produced by Texas and Austin area artists, which, in any case is distributed by AMP on the Music Channel.

2. PURPOSE

The City desires to enter into an Exclusive Operating Agreement with AMP to provide complete programming production, creative and financial management and control of the Austin Music Channel in conformance with the goals of the City to promote local music and local musicians, subject to the terms specified herein.

The City grants to AMP exclusive operating control of the Music Channel throughout the term of this agreement to the extent permitted under the City’s cable Franchise to Time Warner and Grande Communications, either as currently constituted or as amended in the future and, the City grants to AMP the right to operate the Music Channel under its own management as a for-profit commercial venture.

Regarding new Videos, the intent of the parties is that a copy of each new Video created, acquired or received pursuant to this Agreement will be added to the Archives.

3. TERM

The term of this Agreement shall commence on October 1, 2004, and end on August 31, 2012, unless previously terminated. AMP may request two extensions of three years each for a total of six years. This Agreement may be extended upon mutual agreement of the parties in writing, but no longer than August 31, 2018, and not without the express authorization of the Austin City Council.

The City through its designee shall operate the Music Channel through December 31, 2004. The City will turn over the operation to AMP on or before February 1, 2005.

The Channel will revert to its former status under the City's franchise agreements upon termination of this agreement.

4. **MANAGEMENT AND PRODUCTION**

AMP will assure quality production and content consistent with industry standards and its Proposal as described under Section "Professional Production Quality and Content".

AMP will make the Network available on the Music Channel on a 24-hour, 7-day week basis without dead air unless caused by reasons beyond operating control.

AMP will be permitted to sell advertising, negotiate fees with cable operators as appropriate, expand market coverage, and promote other income sources to support operation of the Music Channel to the extent not prohibited by the franchise agreements.

AMP will be solely responsible for all operational, technical and administrative responsibilities related to management of the Channel, including but not limited to programming production, scheduling and playback. The City acknowledges that AMP has no obligations with respect to the operation or content of the Channel prior to AMP's launch of the same.

AMP will distribute the Music Channel's programming schedules to Austin area TV listing services.

AMP represents that it has or will obtain and maintain all consents, licenses, permits, exemptions and authorizations necessary to perform this Agreement and that neither its operations nor the content of the Network as distributed by AMP on the Channel: (i) is or will be libelous, slanderous, obscene, defamatory or indecent or (ii) violates or infringes or will violate or infringe the civil or property rights, copyrights (including, without limitation, music synchronization and performance rights, dramatic and non-dramatic music rights), trademark rights, and/or patent rights of privacy of any person. If AMP is notified by any artist to cease use of a video that is in its possession or is from the Archives, the Contract Administrator must be notified immediately.

The City will use commercially reasonable efforts to ensure that, in fulfilling its Local Programming Commitment as described herein, AMP

will have access at no cost to INET connections installed pursuant to the City's franchise agreements with the Cable Operators.

5. PROGRAMMING

AMP will have the right and obligation to operate the Channel under its own management as a for-profit commercial venture using professional, broadcast quality programming standards. AMP commits that the expanded network (i.e., as distributed outside of Austin) will continue to meet the City's original goals of supporting and promoting local and regional music, arts and entertainment. The Channel's programming will include but not be limited to the following:

- Local music and entertainment—will, on average each month, comprise 75% of the Channel's programming and will feature the talents of Local Artists.
- Austin Artists-- will have an opportunity to have professionally produced music videos or performance footage created for airing on the Network by AMP production each year of the agreement,
- Live/Recorded Performances-- will feature 5 to 6 performances of local music each week initially for the first year of the contract period, *for a minimum of 300 original performances* added to AMP's library and the Austin Music Archives for the first year.
- Regional Exposure—will result for at least 200 Austin musicians annually from the ambitious volume of studio and on-location production in Austin clubs and venues.
- Radio, Television and Film (RTF)— AMP will seek to establish programs with schools such as the University of Texas, Austin Community College, Concordia, Huston Tillotson, St. Edwards University and ACTV to encourage aspiring filmmakers to collaborate with local musicians to create new music videos and performance footage.
- Music genres covered on the Channel ---will include pop, rock, country, Latino, tejano, blues, jazz, urban, dance, R & B, bluegrass, gospel, punk, classics, etc. AMP will use commercially reasonable efforts to develop series or showcases in all genres and endeavor to accurately reflect the diverse musical talents and tastes of Austin.

- The Film Industry—will be highlighted with location reports, interviews with directors, producers, and actors, casting calls, and back-lot parties.
- The Arts—will be covered with segment reports and a weekly showcase series covering all aspects of the performing and visual arts.
- Subject to AMP's distribution agreements with the cable operators, website streaming of the Channel —will be available (within 120 days of launch) from the Channel's website and offer streaming capabilities (up to 2000 streams) that will allow the Channel to be viewed online world-wide 24 hours a day and expand with demand.

Any licenses or intellectual property rights obtained for Performances created under this Section shall, as between the City and AMP, belong to AMP. However, the City will retain the right to air such copied Performances locally on the Music Channel in the event the Music Channel operation reverts to the City, subject to the City's clearance of all rights necessary to air such copies. AMP shall grant to the City an opportunity to review and comment on the wording of all standard licenses which authorize the reproduction and performance of the recording.

6. **EXPANDED COVERAGE**

When AMP launches the network its coverage will expand from approximately 170,000 subscribers in the Austin Franchises to approximately 302,000 subscribers in the Austin and surrounding region. AMP will use its best efforts to increase the Network's viewing area to other Texas Cities once the programming look and content is well established.

Marketing will eventually focus on all other cable operators in Texas (2006). Marketing efforts will be reported to the Music Commission and City Council Telecom Committee in the quarterly briefings.

7. **ARCHIVES**

Archive Contribution—AMP will contribute copies of the recordings of all AMP-produced local (Austin area) performances and interviews, and all AMP-produced music videos of Texas artists, that are aired on the Channel to the City's Music Archives at the Austin History Center, as well as music videos of Texas artists in order to continue the preservation of the music history in Austin. Each copy contributed to the Archives will be

accompanied by a copy of the release granted to AMP by the artist, detailing the uses that AMP may make of the recording. This will add 300 to 500 additional recordings to the City's Archives every year of the agreement. AMP will absorb all costs of the tape and dubbing these recordings and will assure that such copies are produced to industry standards.

Archive Usage--- AMP may utilize Recordings from the Archives. The rights to use each Recording are subject to the agreements with each individual copyright holder of the Recording, to the extent the copyright, license or other authorization is not held by AMP or the City. The City does not warrant any use of the Archive recordings; AMP accepts full responsibility for insuring that any use it makes of archive recordings complies with state and federal law.

Archive Ownership —existing archives will remain the property of the City. AMP will have the right to use clips (of any length) of the existing archives in programming production, documentaries, retrospectives and specials for the Network. The City does not warrant any use of the Archive recordings; AMP accepts full responsibility for insuring that any use it makes of archive recordings complies with state and federal law. AMP will own the recordings it produces for its archives. A copy of each original Recording by AMP along with a copy of the license permitting its use will be made available to the City for inclusion in its Archives. However, unless the City funds the production, it will not own any part of the copyright. As noted in Section 5, it will however, retain the right to air such Recordings locally on the Music Channel in the event the Music Channel operation reverts to the City.

8. OPERATING SCHEDULE

AMP will submit an operating schedule to the City within 10 days of contract execution. Included in the schedule should be the projected date of completion of the new facilities, or alternate arrangements with existing Austin production studios, staffing and projected launch date for the Channel. If permanent facilities will not be available by the projected launch date, an interim operating plan must be included, indicating the temporary location and intended broadcast content.

9. COMPENSATION

AMP and the City agree that there will be no financial compensation of any kind given to AMP for the exclusive right to operate the Music Channel as a commercial venture. The operation is intended to be totally self-supporting.

10. FINANCIAL BENEFIT TO CITY AND COMMUNITY

AMP will provide value to the City through continued and improved operation of the Music Channel at no cost. Assuming the average annual cost of \$482,727 over the last ten years of operating the Music Channel, either as a City department or through a contractor, the operating savings to the City will amount to approximately \$2,793,238 calculated on a present value basis using a five percent discount.

AMP will provide the City with ten 30-second ROS (run-of-schedule) spots on the network daily to promote tourism and special events. This totals 3,650 spots per year. Any such spots that are unused by the City in any day will not accrue to the City for use in another day (except for spots provided pursuant to section 18 of this Agreement). Additionally, the City will be provided with in-house production services with a market value in the amount of \$50,000 annually to produce high quality spots (copy and creative to be provided by the City). Copyrights of the productions shall belong to the City.

The market value of the advertising spots and the production services is estimated at \$2.8 million dollars over the term of this agreement.

As noted in Section 7., AMP also will continuously add quality copies of Recordings or Videos to the City's Archives at no cost to the City. These material and production costs are valued at several thousands of dollars annually.

In addition to the in-kind contribution to the City, AMP will contribute to Austin non-profit music and arts programs in the form of monetary and in-kind support. It is envisioned that since the Austin Music Channel will become a prime information hub and promoter of the local entertainment scene, AMP, as Channel operator, will play a prominent role in development and support of new and existing programs. This support will include a \$100,000 prorated 12-month grant to ACTV to begin within 150 days of contract execution or no later than 30 days after AMP assumes control of the Channel, whichever is earlier.

Finally, is the value local musicians and artists receive from expanded coverage, enhanced studio and live shoots, and production of high quality videos or taped segments that can be used for promotions.

11. STATUS OF ASSETS

The City will retain all assets currently (as of the date of this Agreement) associated with operation of the Music Channel including:

- 1) AMN name,
- 2) all production equipment,
- 3) all videos either in the permanent Archives or the operating library,
- 4) all furniture and fixtures in use in City facilities, either permanent or leased.

Other than the Archives, these assets will not be available for use by AMP.

Except as otherwise expressly provided in this Agreement, as between the City and AMP, AMP will retain all assets it uses to program and operate the Network and the Channel. Other than the Videos provided by AMP to the Archives and AMP's provision of production services to the City in producing its ROS spots as discussed in Section 10, these assets will not be available for use by the City.

12. RIGHT TO AUDIT

The City will have the right to an independent audit of information that has been released by AMP to verify its performance under this contract. This audit will be performed by an independent party mutually agreeable to the City and AMP. This may include, but not be limited to, for example, number of subscribers in reported coverage area, verification of videos contributed to the archives, random viewing of broadcast segments to assure Austin music and arts are prominent in the programming, interviews with local venue owners and performing artists to assure on-site filming is occurring, and surveys to determine if there is general satisfaction among the hotel/motel and other related types of associations' members over the kind of events advertising that is programmed. Material discrepancies will be addressed and resolved by AMP to the satisfaction of the City in a timely manner.

13. INSURANCE REQUIREMENTS

The CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the AGREEMENT:

1. Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Act. 8308-1.01 et seq Tex. Rev. Civ. Stat.) and minimum policy limits for employers liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

a) A Waiver of Subrogation in favor of the City of Austin, form WC 420304

b) A 30 day Notice of Cancellation/Material Change in favor of the City of Austin, form WC 420601

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverages A (bodily injury and property damage) & B (personal and advertising injury). Coverage for products and completed operations shall also be provided with a limit of \$1,000,000. The policy shall contain the following provisions:

a) Independent Contractors coverage

b) City of Austin listed as additional insured

c) 30 day Notice of Cancellation in favor of the City of Austin

d) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin

3. Media Professional Liability Insurance with a minimum limit of \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages for libel, slander, defamation, copyright, title and slogan infringement, piracy, plagiarism, and invasion of privacy in the conduct of his/her business. Additionally, the coverage should cover patent infringement liability. The policy shall list the City of Austin as additional insured.

4. Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the City of Austin:

a) Waiver of Subrogation endorsement TE 2046A

b) 30 day Notice of Cancellation endorsement TE 0202A

c) Additional Insured endorsement TE 9901B

General Requirements

The CONTRACTOR must complete and forward an ACORD standard certificate of insurance to the City before the AGREEMENT is executed as verification of coverage required in subparagraphs above. The CONTRACTOR shall not commence work until the required insurance has been obtained and until such Insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the CONTRACTOR hereunder.

The CONTRACTOR'S insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best Ratings of B+ VII or better.

All endorsements naming the City as additional insured; waivers and notices of Cancellation endorsements as well as the certificate of insurance shall indicate: City of Austin, attn.: Jim Butler, EGRSO, P.O. Box 1088, Austin, Texas 78767.

The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the AGREEMENT, covering both the City and CONTRACTOR, shall be considered primary coverage as applicable.

If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or previous to the date of this AGREEMENT and the certificate of insurance shall state that the coverage is claims made and the retroactive date shall be shown. The CONTRACTOR shall maintain coverage for the duration of this AGREEMENT and for a two year period following the end of this AGREEMENT. The CONTRACTOR shall provide the City annually with a certificate of insurance as evidence of such insurance.

If insurance policies are not written for amounts specified above, the CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The City has the right to review the insurance requirements set forth during the effective period of this AGREEMENT and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, and the claims history of their industry or financial condition of the insurance company as well as the CONTRACTOR.

The CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the AGREEMENT or as required in the AGREEMENT.

The CONTRACTOR shall be responsible for premiums, deductibles, self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

The insurance coverages required under this AGREEMENT are required minimums and are not intended to limit the responsibility or liability of the CONTRACTOR.

14. FINANCIAL ASSURANCE

Within 120 days from date of contract execution, AMP will provide documentation that it has secured its first year's operating funds and has completed its first year's operating budget. A written statement from AMP's financial officer or bank officer shall be submitted to the City's Contract Administrator indicating whether sufficient working capital is available for the Channel's budget for the following six month period. This assurance will be submitted semi-annually.

If these written statements indicate that funds are insufficient to continue operation of the Channel for the then following six-month period, both parties will enter into discussions in order to: agree on changes to the contract that might enhance the cash flow opportunities temporarily, agree to a change in management, and generally review other available options. Material changes in the scope of operations of the Network from those contemplated by this Agreement must be approved by the City Council.

15. CORPORATE OWNERSHIP AND CONTROL

AMP is currently a solely owned corporation. AMP's President and Owner, Constance Wodlinger possesses specific skills and experience essential to the success of this commercial venture, (Exhibit B). If for any reason Ms. Wodlinger divests herself of the managing control of the Channel operations (i.e., is no longer the Channel's chief executive officer), AMP shall notify the City immediately. Within 21 days, AMP will submit a proposed operating plan (if different from the then current operating plan) and a proposed new manager, along with the manager's resume and supporting credentials. Provided that the proposed new plan, if any, and new manager are reasonably acceptable to the City, it will approve the management change within 30 days. If the City does not so approve them, AMP will continue to submit proposed revised plans and proposed new managers until approved by the City. If the City and AMP do not agree on a revised plan within 90 days after receiving notice of the

change in ownership or control of AMP, the City may declare the contract in default. Further, AMP cannot assign its interest in this contract to another party without the prior written approval of the City Council. Such permission shall not be unreasonably withheld.

AMP will notify the City as additional parties invest in the corporation.

16. PERFORMANCE EXPECTATIONS

Throughout the term of this agreement, the City expects that the Contractor will operate the channel under the representations made herein and participate in City sponsored presentations as reasonably requested. These include but are not limited to:

- a. Increased coverage from approximately 170,000 subscribers in the Austin franchise area to approximately 302,000 subscribers;
- b. Live/taped shoots/production averaging at least 10 performances per week after the initial one-year start-up period, for an annual minimum total of 500 performances;
- c. At least 300 performances of varying length will be contributed to the Archives in the first year. Thereafter, an average of 500 performances of varying lengths will be contributed each year to the Archives;
- d. The network will be offered and marketed to substantially all other Texas cities;
- e. Quarterly programming briefings and updates to the Music Commission and the City Council Telecommunications Infrastructure Committee;
- f. Continuation of local artists as backbone of programming;
- g. Financial independence and sustainability;
- h. High quality production videos featuring local performers;
- i. Quantifiable in-kind and monetary support for the Arts and Music non-profit organizations; and,
- j. Prepared annual report that indicates: achievement of performance measures, contributions to Arts and Music non-profit organizations, and expanded areas of coverage.

17. DEFAULT AND TERMINATION

- (a) If for any reason AMP believes it can no longer perform its obligations under the terms of this contract, it will notify the City immediately.
- (b) The City agrees to suspend its right to terminate this contract for convenience.

- (c) Default by Contractor. Each of the following shall be deemed a default by Contractor ("Contractor Default") hereunder and a material breach of this Agreement:
- i. The breach by Contractor of any of its representations, and the failure of Contractor to cure such breach within the ten days of written notice or if such breach is not capable of being cured within that time Contractor fails to commence the cure within such ten day period, and thereafter diligently pursues the cure to completion.
 - ii. The failure of Contractor to provide reasonable and customary adequate assurances of performance within ten days of written demand from the City.
 - iii. The failure of Contractor to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Agreement that are to be kept or performed by Contractor, and the failure to cure such breach within thirty (30) days after delivery by City to Contractor of written notice specifying the default; provided, however, if the breach is curable, but incapable of being cured within such 30-day period, a default shall not occur under this subsection if Contractor promptly commences the cure of the breach during such 30-day period and thereafter diligently and continuously pursues the cure to its completion.
- (d) Remedies of City. If a Contractor Default occurs, City may at any time thereafter:
- i. Terminate this Agreement by giving Contractor written notice thereof.
 - ii. Recover, to the extent permitted by law and this Agreement, all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate.
 - iii. Remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years.

- iv. Exercise, except as may be limited by this Agreement, any other right or remedy available at law or in equity. All rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- (e) The obligations of the City under this Agreement are subject to, and contingent on the City's rights under the Franchises to program a music channel on Cable Operators' Systems. Any abrogation by Cable Operators of that right shall be considered a force majeure event immediately allowing the City and AMP, respectively, to terminate all of their respective obligations under this Agreement upon 30 days prior written notice to the other.
- (f) Default by City. Each of the following shall be deemed a default by City ("City Default") hereunder and a material breach of this Agreement:
 - i. The breach by City of any of its representations, and the failure of City to cure such breach within the ten days of written notice or if such breach is not capable of being cured within that time City fails to commence the cure within such ten day period, and thereafter diligently pursues the cure to completion.
 - ii. The failure of City to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Agreement that are to be kept or performed by City, and the failure to cure such breach within thirty (30) days after delivery by City to City of written notice specifying the default; provided, however, if the breach is curable, but incapable of being cured within such 30-day period, a default shall not occur under this subsection if City promptly commences the cure of the breach during such 30-day period and thereafter diligently and continuously pursues the cure to its completion;
- (g) Remedies of Contractor. If a City Default occurs, Contractor may at any time thereafter:
 - i. Terminate this Agreement by giving City written notice thereof.
 - ii. Recover, to the extent permitted by law and this Agreement, all actual damages, costs, losses and expenses, incurred by the Contractor as a result of the City's default, including, without limitation, cost of cover, reasonable

attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate.

- iii. Exercise any other right or remedy available at law or in equity. All rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

18. LIQUIDATED DAMAGES

For failure to deliver the signal during regularly scheduled viewing hours, the City shall receive sufficient make-up 30-second spots (as discussed in section 10) to compensate it for the loss of any such spots suffered during the outage unless such outage or failure is authorized in writing in advance by the City or unless such failure or outage is caused by 1) force majeure, 2) failure of Cable Operators' transmission media, or 3) unforeseen equipment failure.

19. DELIVERY AND DISTRIBUTION OF VIDEOS

- (a) **Signal Quality.** Contractor shall deliver to the City, at one or several mutually agreed upon location(s), a video and audio signal of a technical quality at least as high as the technical quality of the video and audio signal delivered with respect to widely distributed cable television programming. The video and audio signal shall consist of Videos and any commercial or other insertions ready for transmission on the Channel.
- (b) **Expanded Coverage.** AMP will expand the Channel's coverage immediately (upon launch of the Network) from Local to the Central Texas region, followed by potential State-wide distribution over the next five years.
- (c) **Kid-Vid.** Contractor shall provide to the City, on a quarterly basis and otherwise upon reasonable request, all certifications, if any, necessary or appropriate to document compliance by the Channel with the Children's Television Act of 1990 or any applicable law and regulation.
- (d) **Carriage.** The Cable Operators will have exclusive right to designate the channel placement over which the Austin Music Channel will be carried and will have the right to change such designation from time to time and at any time after reasonable notice to its subscribers and the City. The City shall notify Contractor of any proposed change as soon as practicable.

- (e) Notwithstanding anything in this Agreement to the contrary, the City represents and agrees
 - i. No Franchise does or will, during the term of this Agreement, prohibit AMP's operation of the Channel as contemplated by this Agreement;
 - ii. The Channel-Related Provisions of each Franchise continue through August 31, 2011 ("Franchise End Date");
 - iii. The City will not amend or abrogate the Channel-Related Provisions (as defined in Section 1 above) of any Franchise;
 - iv. Each Cable Operator who elects to carry the Network has agreed that AMP will be allowed to sell commercial advertising time on the Austin Music Channel;
 - v. A Cable Operator's carriage of Network, as provided by AMP under this Agreement, on its Systems, pursuant to an agreement with AMP, will be deemed to satisfy the Cable Operator's obligations under its Franchise with respect to carriage of the music channel required to be carried under such Franchise; provided, however, that Cable Operators who do not reach an agreement with AMP by February 1, 2005 are not required to carry the Network; and
 - vi. If any Franchise is extended after the Franchise End Date, the City will use best efforts to ensure that any successor franchise contains, through at least August 31, 2012, provisions the effect of which are substantially similar to the Channel-Related Provisions.

- (f) **Name.** In naming or otherwise identifying the Channel or Network, AMP shall not use the names of the City of Austin, the Austin Music Network, or AMN 15. However, Contractor may use the written descriptive identifier "Austin's Music + Arts Channel," and the spoken descriptive identifier "Austin Music and Arts Channel." AMP will not use AMN in the name, but will include "Austin" either in the name or the spoken/written descriptive tag line/identifier for the Channel.

20. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

- (a) **City's Authorization.** City represents and warrants that: (i) City is a home-rule city duly organized and in good standing under the laws of the State of Texas; (ii) City has the requisite power and authority to execute and deliver this Agreement and to fully perform its obligations hereunder; (iii) the execution, delivery and performance of this Agreement has been duly authorized by all actions necessary on the part of City; (iv) City is not subject to any contractual or other legal obligation which will in any way

interfere with its full performance of this Agreement; and (v) the individual executing this Agreement on behalf of City has the authority to do so and bind the City to this Agreement.

- (b) **Contractor's Authorization.** Contractor represents and warrants that: (i) Contractor is a for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Texas, as evidenced by Contractor's certified Articles of Incorporation to be provided to City upon execution of this Agreement; (ii) Contractor has the requisite power and authority to execute and deliver this Agreement and to fully perform its obligations hereunder, as shown by a notarized copy of a corporate resolution or equivalent document; (iii) the execution, delivery and performance of this Agreement has been duly authorized by all action necessary on the part of Contractor; (iv) Contractor is not subject to any contractual or other legal obligation which will in any way interfere with its full performance of this Agreement; and (v) the individual executing this Agreement on behalf of Contractor has the authority to do so and bind the Contractor to this Agreement.
- (c) **Contractor's Warranty.** Contractor warrants and represents that all operations provided under the Agreement will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Agreement, and all applicable Federal, State and local laws, rules or regulations.
- (d) **Contractor Certifications.** Contractor and its President, individually hereby certify that there is no pending litigation against either that could materially affect the successful operation of the requirements set forth in this agreement. Contractor further certifies that there has been no unlawful collusion among interested parties to this agreement, or no special access to information regarding the operation of the music Channel.

21. **INDEMNIFICATION AND OTHER REMEDIES**

- (a) **Indemnification by Contractor.** Contractor shall defend, indemnify the City, its officials, employees and agents for, and shall hold them harmless from and against, any and all losses, settlements, claims, actions, suits, proceedings, investigations, judgments, awards, damages, liabilities (collectively, "Losses" and, individually a "Loss") which are sustained or incurred by or asserted against any of them and which arise out of (i) any alleged

breach of this Agreement by Contractor (ii) any false representation by Contractor in this Agreement, or (iii) the operation of the Network or the Channel, the content of or the delivery or distribution of the Network (including, without limitation, any Loss arising out of any alleged libel, slander, defamation, indecency, obscenity, invasion of rights of privacy or infringement or violation of copyrights, music synchronization or performance rights, dramatic or non-dramatic music rights, trademark rights and/or patent rights) and shall reimburse the City for any and all legal, accounting and other fees, costs and expenses (collectively, "Expenses") reasonably incurred by the City in connection with investigating, mitigating or defending any such Loss. Nothing herein shall be deemed to limit the rights of Contractor (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

- (b) **Notice; Defense.** Promptly after receipt by City of notice of the commencement of any action, suit, proceeding or investigation in respect of which a claim for indemnification may be made hereunder, City shall give written notice thereof to the City Contractor, informing the Contractor of the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notices shall be delivered to the Contractor at its address for notices below. The failure to so notify the Contractor will not relieve the Contractor from any liability or obligation which the Contractor may have to any indemnified person under this Agreement except to the extent of any material prejudice to the other party resulting from such failure. If any such action, suit, proceeding or investigation is brought against the City, Contractor will be entitled to participate therein and, if it wishes to assume the defense thereof with counsel satisfactory to City (who shall not, except with the consent of City, be counsel to City) and gives written notice to City of its election so to assume the defense thereof within 15 days after notice shall have been given to it by City pursuant to the preceding sentence, will be entitled to assume the defense thereof. In no event may Contractor admit liability on the part of the City without the prior written consent of the City Attorney.
- (c) **Consequential Damages; Limitation on Commencement of Litigation.** Neither Contractor nor the City shall, for any reason (other than its willful breach of any material term of this Agreement) or under

any legal theory, be liable to the other party or any third party for any special, indirect, incidental or consequential damages or for loss of profits, revenues, data or services, arising out of or with respect to the operations regardless of whether such damages or loss was foreseeable and regardless of whether it was informed or had direct or imputed knowledge of the possibility of such damages or loss in advance. Neither party shall commence any suit, action or proceeding with respect to a breach of this Agreement unless such party shall have given written notice of its intention to commence such suit, action or proceeding to the other party at least 30 days prior to such commencement.

22. FORCE MAJEURE

Neither party shall have any liability to the other party for any failure to perform hereunder, if such failure is due to: an act of God; inevitable accident; fire; riot or civil commotion; act of government or governmental instrumentality (whether federal, state or local); act of foreign or domestic terrorism; failure of performance by a common carrier; or other cause (excluding financial inability or difficulties) beyond such party's reasonable control; provided, however, that, if such failure interrupts or materially degrades the technical quality or level of the Network programming as delivered by AMP to any Cable Operator's City-franchised, then such interruptions or degradation shall be deemed to constitute grounds for termination of this Agreement if they continue for more than 48 consecutive hours or four 24-hour periods in any period of twelve consecutive months, but not otherwise. City and Contractor shall use all reasonable efforts to remedy the cause of such interruptions or degradation as soon as possible.

23. NOTICES

All notices required or permitted to be given pursuant to this Agreement will be given in writing, will be transmitted by personal delivery, by registered or certified mail, return receipt requested, postage prepaid, by an overnight delivery service or by telecopy or other electronic means. Notices delivered by registered or certified mail, return receipt requested, postage prepaid shall be deemed delivered three business days after postmarked. Notices delivered by other means shall be deemed delivered upon receipt by the addressee, unless refused; in which event such notices shall be effective as of the date of attempted delivery. Notices shall be addressed as follows:

When City is the intended recipient:

Economic Growth and Redevelopment Services Office
P.O. Box 1088

Austin, Texas 78767
Attention: Jim Butler
TEL: (512) 974-6318
FAX: (512) 974-6379

When Contractor is the intended recipient:

Constance Wodlinger
Austin Music Partners
501 North I-35
Austin, Texas 78702
Telephone: (512) 804-2566

24. ADDITIONAL TERMS

- (a) **Binding Effect; Assignment.** This Agreement shall be binding upon the parties and any of Contractor's successors and assigns and shall inure to the benefit of the parties and Contractor's permitted assigns. Neither party may assign any of its rights or delegate any of its duties under this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment of rights or delegation of duties under this Agreement by a party without the prior written consent of the other party shall be void, and a material default by such party. Except as specifically provided herein, no person shall be a third party beneficiary of this Agreement.
- (b) **Headings.** The headings set forth in this Agreement have been inserted for convenience of reference only, shall not be considered a part of this Agreement and shall not limit, modify or affect in any way the meaning or interpretation of this Agreement.
- (c) **Survival of Representations.** All representations and warranties set forth herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- (d) **Amendments; Modifications; Consents; Waivers.** No addition to, and no cancellation, renewal, extension, modification or amendment of, this Agreement shall be binding upon a party unless such addition, cancellation, renewal, extension, modification or amendment is set forth in a written instrument which states that it adds to, amends, cancels, renews, extends or modifies this agreement and which is executed and delivered on behalf of each party by an officer of such party.

- (e) **Waivers Limited.** No waiver of any provision of this Agreement shall be binding upon a party unless such waiver is set forth in a written instrument which is executed and delivered on behalf of such party by 1) the Contract Administrator for the City, 2) by an officer of Contractor. Such waiver shall be effective only to the extent specifically set forth in such written instrument. Neither the exercise (from time to time and at any time) by a party of, nor the delay or failure (at any time or for any period of time) to exercise, any right, power or remedy shall constitute a waiver of the right to exercise, or impair, limit or restrict the exercise of, such right, power or remedy or any other right, power or remedy at any time and from time to time thereafter. No waiver of any right, power or remedy of a party shall be deemed to be a waiver of any other right, power or remedy of such party or shall impair, limit or restrict the exercise of such other right, power or remedy, except to the extent explicitly waived.
- (f) **Governing Law and Venue.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. The respective obligations of the parties under this Agreement are subject to all applicable federal, state and local laws, rules and regulations (including, without limitation, the Communications Act of 1934, as amended, the Cable Communications Policy Act of 1984, as amended, and the rules and regulations of the Federal Communications Commission hereunder). In addition, this Agreement is subject to the Franchise and in the event of any conflict between the terms of this Agreement and the Franchise, the terms of the Franchise shall control. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- (g) **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken

provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

- (h) **Right to Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- (i) **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local law, or in a manner that is determined by the City, in its reasonable judgment, to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
- (j) **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.
- (k) **Rights to Bid, Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt, but no such submission will be deemed to give the City any intellectual property rights in the materials submitted. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.
- (l) **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full

amount of such commission, percentage, brokerage or contingent fee.

- (m) **Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to performance of such contract. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- (n) **Prohibition against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Agreement voidable by the City.
- (o) **Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.
- (p) **Alternative Dispute Resolution.** City and Contractor shall submit in good faith to mediation before filing a suit for damages under this Agreement.
- (q) **Compliance with Safety Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement

shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

- (r) **Performance Measures.** The performance measures for this Agreement are shown in Exhibit A to this Agreement. Reporting due to City under this Agreement shall be in complete compliance with Exhibit A as attached to this Agreement.
- (s) **Entire Agreement.** This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof and cancels and supersedes all of the previous or contemporaneous contracts, representations, warranties and understandings (whether oral or written) by, between or among the parties with respect to the subject matter hereof, except for the Proposal (Exhibit A) which is specifically incorporated herein. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. In case of conflict between the provisions of this Agreement and the Proposal, this Agreement shall govern.

• -

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

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

CITY

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A – Austin Music Partners Proposal for Channel 15 (currently AMN)

Exhibit B – Constance Wodlinger Biography

Exhibit C – Designated Market Area (List for Austin)

EXHIBIT A

AUSTIN MUSIC PARTNERS PROPOSAL FOR OPERATION OF CHANNEL 15

Austin Music Partners, Inc (AMP) is offering to assume all financial, operational and management responsibility for cable Channel 15. This offer is in response to the City of Austin's stated desire to seek a viable alternative for operation of Cable Channel 15 as a Music and Arts channel without any public funding.

AMP will make a programming commitment that the channel will continue to meet the City's original goals of supporting and promoting local and regional music, arts and entertainment and economic development.

AMP proposes the privatization and potential expansion of the channel to a true "network" status, offered statewide and beyond. The new network would provide a 24-hour media presence showcasing Austin Music, Film, Arts and Entertainment. This new network would have a significant impact on the local music industry and the careers of musicians as well as those in music and production related businesses, the film industry, and the many visual, performance, and creative art forms that flourish in Austin.

The new network will also establish a valuable community resource providing information on all entertainment options available for residents and visitors alike. As a network offered statewide, it will drive economic development in the form of tourism, as AMP establishes the brand and works with the City and ACVB to reinforce Austin's image as "The Live Music Capital of the World."

AMP is a local initiative with local control of programming, management, and operations. The managing partner has nearly 30 years experience in music and television and has previously built, launched and operated two national and international 24-hour music and entertainment television networks.

Required from City of Austin:

- Long-term Operating Agreement with AMP for Cable Channel 15
- Use of Inet connections installed for use of Music Channel

- No City or public funding
- No City buildings, production equipment, furniture or facilities
- No City utilities, internet service, or computer network

Benefits Offered to City of Austin by AMP:

- No City or Public Funding, Facilities or Equipment
- Local Programming Commitment to Showcase and Promote Austin Music, Arts and Entertainment and Drive Economic Development
- Much Improved Production -Professional Television Production Quality will improve Programming Content, and On-Air Look.
- Expanded State – Wide Distribution will potentially increase the viewing households from the current 170,000 (Austin Franchise) to a projected 2.5 million within contract term.
- An effective 24-hour Media Presence to promote Austin Music, Arts and Lifestyle Events and Austin itself as a premier leisure and entertainment destination to drive tourism and economic development
- \$2.4 Million Advertising Schedule and Production Services for City of Austin to promote events, fairs, festivals and all things “Austin.”
- Music Archives - Contributions of all professionally produced television performances and interviews of local and regional artists to the City of Austin Music Archives
- A Substantial Investment - Private Sector Investment to Promote Austin Music, Arts and Entertainment
- Experienced, Professional Management in Music / Television

Austin Music Partners Proposal Outline:

Local Programming Commitment

Programming Commitment – AMP will make a programming commitment that the expanded network will continue to meet the City's original goals of supporting and promoting local and regional music, arts and entertainment and economic development.

Local Music / Entertainment will be the backbone of the new network. **75%** of network programming will feature the talents of local musicians, artists and entertainment at local venues.

Austin Artists - At this time only a very small percentage of Austin artists have professionally produced music videos or performance footage for television. The network plans to be in Austin clubs and venues regularly with remote crews and our own talent scout.

Live / Taped Performances - The network goal will be to produce at least 5 to 6 hours of live / taped performance video of local music each week during the first year and increase that production level each year. This will add a minimum of 300 original performances to the network library and the Austin Music Archives each year.

Regional Exposure -This ambitious volume of on-location production is Austin's clubs and venues will provide regional exposure for at least 200 Austin musicians and artists each year.

RTF Programs - In addition, AMP will endeavor to establish new programs with local RTF (Radio, Television, Film) schools at University of Texas, Austin Community College, St. Edwards University and ACTV to encourage aspiring filmmakers to collaborate with local musicians to create new music videos and performance footage.

Music Genres...pop, rock, country, latino, tejano, blues, jazz, urban, dance, R & B, bluegrass, gospel, punk, classics, etc. The network will develop series or showcases in all feasible genres and endeavor to reflect the diverse musical talents and tastes that flourish in Austin.

Series and Programming in Development – A sampling of the types of series, segments, and programming being developed is included in the "AMP Programming Outline."

Programming Commitment Cont.

The Film Industry – The Austin Film industry is an exciting part of the entertainment scene in Austin. The network will cover all the activity and excitement... Location reports, directors, producers, actors, interviews, casting calls, back-lot parties. Spotlights on the local film industry and a weekly “Midnight Movie” segment featuring films with an Austin connection will be part of the line-up.

Music & Film Segment Syndication - As part of its’ long term business model, the network also plans to develop a syndication service providing daily / weekly footage and interview segments from the **Austin Music and Film scene** to the many national entertainment shows...Entertainment Tonight, Extra, Access Hollywood and a host of other shows across the country and abroad. Special coverage of SXSW, ACL Festival and other events.

The Arts – The network will have a full-time reporter covering the Arts every day with segment reports and producing a weekly Arts showcase series. The performing arts...Dance, Theatre, Symphony, Opera...and the visual arts...gallery openings and expositions...and the off-beat art and creative culture that flourishes in Austin.

Fairs, Festivals, Lifestyle Events – The calendars for Austin and the surrounding communities abound with fairs, festivals and lifestyle events, many with live music performances. The network will be there to cover as many events as possible.

Benefits / Charities – The network will be an active participant in the community supporting and promoting the fund-raising efforts and good works of local charitable organizations...covering the events and interviewing organizers.

Entertainment Information – AMP will establish a valuable community resource for all the entertainment options available in the area for both residents and visitors alike. 4 to 5 hosted and regularly scheduled hourly segments will detail tonight’s live music line-up, tickets and tour info, comedy club acts, movies, gallery openings and all other options...graphics, on-screen scrolls and a comprehensive web-site will offer complete information for viewers.

Website / Streaming - The network website will offer ample streaming capabilities (up to 2000 streams) that will allow network programming to be viewed online world-wide 24 hours a day and expand with demand, subject to cable distribution agreements.

Professional Production Quality and Content

Professional Production Quality and Content – With significant production and operating budgets, the professional production quality of the programming content and on-air look of the network will be much improved. Talented local producers on staff will set the standard.

- 50–60 hours of original programming and series will be produced each week in the AMP's Austin studios. (Examples in Programming Outline)
- Live and taped entertainment information segments, interviews, and magazine-format shows will also be produced in-house.
- Location crews and remote trucks will add several more hours of local live and taped performance each week.
- Local freelance crews will be used regularly to augment full-time staff

Expanded State-Wide Distribution

Expanded Distribution – AMP, via its' distribution partnership with Time Warner will immediately almost double the coverage area to all of the Central Texas region when the new network launches, and then attempt to expand state-wide market by market over the contract term. The network will be made available to Time Warner and all other cable operators for a small carriage fee based on number of subscribers.

Current Coverage - Channel 15 currently reaches more than 170,000 Austin households per the cable franchise agreement with Time Warner, and an additional 14,000 households via Grande. (Grande's 14,000 includes Austin, San Marcos, San Antonio, and New Braunfels)

Coverage Area Almost Doubles at Launch - Once the network launches, the coverage area will almost double immediately (to 302,000 households) as network carriage is expanded to

the Central Texas region on Time Warner systems including:

San Marcos	Luling	West Lake Hills
Smithville	Round Rock	Dripping Springs
Bastrop	Thorndale	Smithville
Wimberley	Thrall	Taylor
Lockhart	Fredricksburg	Lockhart

Grande Cable - The new network will also be offered to Grande Cable on the same basis. The 2 minutes per hour of commercial avails provided to cable operators, should more than compensate for the small carriage fee the network charges. It is hoped Grande will continue to make the network available to their subscribers.

Time Warner Systems - Once the look and programming content of the network are well-established in the Austin market (6 months to 1 year), it will be offered to all other Time Warner systems in •

257 Texas cities including:

Major Markets

Houston
San Antonio
El Paso
Waco
Harlingen

Other Cities including:

Beaumont	Brownsville
Corpus Christi	Galveston
McAllen	S. Padre
Kerrville	Eagle Pass
Port O'Conner	Uvalde

AMP hopes to add at least **one** of these major markets and several smaller ones each year.

Marketing Campaign to all Cable Operators- In the 4th quarter of 2005, AMP will launch a marketing campaign to offer the network to all cable systems in Texas (total Texas cable households **4,074,476**) Marketing efforts will also be directed to the cable operators in the surrounding states.

AMP is projecting a household / subscriber reach of **2,500,000** homes and businesses during initial contract term ending August, 2012.

National and International Distribution Goals

Music Series – Some of the locally produced music series developed will eventually be offered for national and international distribution, reinforcing Austin as “Live Music Capital of the World.”

This additional exposure can be critical to building music careers.

Historic Venues Series - The network will explore the possibility of developing series from some of Austin's wonderful historic venues...like the Paramount Theatre, Stubbs, Antone's, The Continental Club, the Victory Grill, to name just a few.

AMP's Managing Partner has extensive experience in producing network music series that are made available for broadcast in other U.S. markets and distribution abroad.

Network Website – The network's extensive website will include information on and links to Austin artists and their C D.'s for viewers in other cities and countries.

City of Austin Music Archives

Archive Contributions – AMP will contribute tapes of all locally produced performances and interviews to the City of Austin Music Archives, as well as music videos of Texas artists to continue the tradition of preserving the Music History of Austin.

Archive Usage - The existing archives would remain the property of the City of Austin, and AMP would have the right to utilize clips from the archives in programming production, documentaries, retrospectives and specials for network.

Archive Licensing - AMP will address any necessary licensing issues for archive material utilized in network programming.

\$2.8 Million Ad Schedule for City of Austin

\$2.8 Million Dollar Ad Schedule – (estimated market value) AMP will provide the City of Austin with a generous daily advertising schedule on the network to promote tourism and events, fairs and festivals that draw visitors to Austin.

This free advertising schedule represents a very substantial increase in the budget available to promote the City of Austin in general and specifically as a premier music and leisure and entertainment destination.

\$350,000 Production Services

Production Budget - AMP will also provide the City with an in-house production budget of \$50,000 (including production personnel and equipment) per year to produce quality commercials promoting the City of Austin and its' Music, Arts, Entertainment, Fairs, Festivals and Events.

(7 years @ \$50,000 = \$350,000)

Total Value to City of Austin: \$ 3 million +

(Based on contract term ending August, 2012)

The daily ad schedules and production services have an approximate market value of **\$3 million +** over the contract period and reflects added value for projected expansion to other cities.

- **Daily Advertising Schedule** - The City of Austin will have a daily advertising schedule available on the network for the initial term of the agreement:

- 10 -** 30 second advertising spots per day
in Central Texas region (ROS Schedule)
with spots in each daypart

Total spots per year: 3,650 (Central Texas)

- 5 -** Of the above commercials, 5 would be
guaranteed to run every day in other
markets. (One in each daypart)

Total spots per year: 1,825 (outside Central Texas)

Timeline – Network Start Up and Launch

Timeline - It will take a minimum of 6 months to build out new studios and facilities, hire and train staff, and start producing and creating a library volume of local performance video to be aired.

AMP initially planned to build-out and equip new office and studio facilities

in the downtown Austin area. Since timing has now become a critical issue, AMP is pursuing the option of working within an existing Austin studio and production facility in order to accelerate the launch process.

THE AUSTIN MUSIC PARTNERS

Austin Music Partners, Inc. (AMP) was formed to respond to the City of Austin's stated desire to seek a viable alternative to continue the operation of Cable Channel 15 as a Music and Arts channel without any City funding.

The final agreement reached with the City of Austin will be subject to corporate approval by each of the entities involved.

EXHIBIT B

CONSTANCE WODLINGER BIOGRAPHY

Constance Wodlinger has developed, launched and operated two 24-hour music and entertainment networks for domestic and international television. . .Hit Video USA and TMZ – The Music Zone.

The first, Hit Video USA, a wholly-owned company, was broadcast via satellite in the U.S. from 1985 – 1990 and ultimately bought out by MTV Networks parent company, Viacom International. Wodlinger retained the rights for the feature series and continued to produce them for international distribution. (Owner, President & CEO)

In 1994, Ms. Wodlinger was approached by Liberty Media to develop and operate a 24 hour music network for global distribution via the PanAmSat satellite system. This joint venture network, TMZ – The Music Zone, was on the air through mid 1996, when the Liberty division was sold to Murdock's NewsCorp. (Partner, President & CEO)

Wodlinger retained the TMZ trademark and continued to produce the world's largest catalog of weekly music series for television for domestic and international distribution. Wodlinger's companies have produced more than 50,000 hours of original programming that has been seen in all corners of the world including Europe, Africa, Asia and the Pacific Rim, the Middle East, South America, and the United States.

In 1989, Wodlinger negotiated the first-ever worldwide television music licensing deal with VPL and IFPI in London, representing record companies around the world. The deal was announced by the joint heads of all the major record labels at a press conference at MIP-TV in Cannes. That agreement continues to set the standard for all music licensing agreements with producers.

Prior to her network ventures, Wodlinger owned and operated several successful U.S. radio and television stations and developed numerous national promotions including a summer concert series with HBO. She also operated a television news bureau in Nairobi, Kenya covering the African continent with documentary and news footage for the U.S. and international television market.

The NBC Today Show featured Wodlinger as "Business Person of the Week." She has also appeared on CNN, ABC Business World, Prime Time Live, Entertainment Tonight and interviewed by several magazines including Fortune, Time, Variety, Billboard, Venture, Television Business International, and others.

Recording artists and record labels have awarded Wodlinger more than 100 gold and platinum records during her career in the music business. She was one of the founding platinum members of the Rock and Roll Hall of Fame.

EXHIBIT C

CITIES INCLUDED IN AUSTIN AUSTIN DESIGNATED MARKET AREA		CITIES INCLUDED IN SAN ANTONIO DESIGNATED MARKET AREA	
Austin	Lockhart	Alamo Heights	Kirby
Bartlett	Luling	Balcones Heights	La Coste
Bastrop	Manor	Bandera	Lackland AFB
Bee Cave	Martindale	Blanco	Leon Valley
Bertram	Mountain City	Brooks AFB	Live Oak
Briarcliff	Point Venture	Bulverde	Marion
Buda	Rollingwood	Castle Hills	New Braunfels
Cedar Park	Round Rock	China Grove	Olmos Park
Dripping Springs	San Leanna	Cibolo	Randolph AFB
Elgin	San Marcos	Converse	San Antonio
Florence	Smithville	Elmendorf	Schertz
Fredericksburg	Sunset Valley	Fair Oaks Ranch	Seguin
Granger	Taylor	Fort Sam Houston	Selma
Hays	Thorndale	Garden Ridge	Shavano Park
Holland	Thrall	Gray Forest	Somerset
Hutto	Umland	Helotes	Stockdale
Kyle	Village of the Hills	Hill Country Village	Terrell Hills
Jonestown	Volente	Hollywood Park	Universal City
Lago Vista	West Lake Hills		Windcrest
Lakeway	Wimberley		
Leander	Woodcreek		