

## **CONTRACT TO MANAGE THE COMMUNITY ACCESS TELEVISION FACILITIES & MEDIA MANAGEMENT SERVICES**

This Contract is between the City of Austin, a Texas home-rule municipal corporation, (“City”), and Public Access Community Television, Inc., a Texas non-profit corporation doing business as channelAustin (“Contractor”). Contractor shall manage the City’s three public access channels, including equipment and facilities located at 1143 Northwestern Avenue pursuant to the terms and conditions of this Contract.

### **SECTION 1. TERM.**

- A. The initial term of this Contract begins on October 1, 2011, and ends September 30, 2013. The City and Contractor may by mutual written agreement extend the term of the Contract up to two (2) times, with each term extension being one (1) year, unless a shorter term extension is agreed to in writing. This Contract may not extend beyond the final termination date of September 30, 2015.
  
- B. If this Contract is not extended, or is terminated prior to the City negotiating and executing a new agreement with Contractor or some other provider of public access management services, the City at its sole discretion may request Contractor, and Contractor agrees, to hold over and continue providing services under the terms and conditions contained in this Contract until the City has negotiated and executed a new contract with Contractor or some other provider of public access management services or for up to one-hundred and twenty (120) days, unless a longer time period is mutually agreed upon by the parties in writing.
  - 1. A hold over request by the City must be made to the Contractor in writing, no fewer than thirty (30) days prior to the Contract termination date.
  - 2. If the Contract is being terminated due to default, any hold over request shall be included in the notice of default.
  - 3. The City shall reimburse Contractor for all costs incurred preserving operations during any hold over period, provided that Contractor provides City with supporting documentation of such costs. Supporting documentation shall consist of original invoices or receipts and other generally accepted accounting practices to verify these expenses.

### **SECTION 2. DEFINITIONS.**

**CITY** means the City of Austin, a Texas home rule municipal corporation.

**CONTRACTOR** means Public Access Community Television, Inc., (PACT) a Texas non-profit corporation, doing business as channelAustin.

**CAPITAL FUNDING** shall refer to those funds available to the City through the “PEG Capital Support Fee” required of state cable and video franchisees by the Public Utility Regulatory Act (PURA) Chapter 66, Sec. 66.006 (b).

The purpose of Capital Funding shall be to maintain and repair and to improve facility operations, including the acquisition and replacement of new production equipment and resources, systems technologies, accompanying software, and upgrades, including associated implementation, initial and on-going training and maintenance agreements for equipment purchased with the Capital Funding.

Capital Funding may be used for all physical facilities and equipment used to provide public, educational and governmental access channel capacity, programming, and transmissions. This includes, but is not limited to, coaxial and fiber lines and all other physical connections, production studios and offices, studio and office equipment including software and training to use the equipment and software, furnishings and sets, production facilities, mobile production vehicles and cameras, and any other property having a useful life of more than one (1) year. Such expenditures also include the labor associated with the acquisition and installation of such equipment and facilities as well as any maintenance/service agreements purchased in conjunction with the purchase of the equipment and facilities.

Capital expenditures also include amounts paid for the acquisition, permanent improvement or betterment of property which substantially extends the useful life of the capital item beyond one (1) year. The benchmarks include:

- (a) Whether the funds are paid out for new buildings or permanent improvements or betterments made to increase the value of any property or estate,
- (b) Amounts expended in restoring the property, or
- (c) Amounts which are paid or incurred (1) to add to the value, or substantially prolong the useful life, of property, or (2) to adapt property to a new or different use.

These funds shall be set aside in a restricted fund, with sub-funds for each of the providers paying the fees. The Austin City Council must appropriate available funding for any expenditures from the fund.

**BOARD OF DIRECTORS** means the group of individuals appointed and duly constituted under the corporate charter, bylaws and relevant state law with authority to oversee and provide guidance and advice for the corporate affairs of Public Access Community Television, Inc.

**CONTRACT MANAGER** means the City’s Director of Telecommunications & Regulatory Affairs, or his or her designee.

**EQUIPMENT** shall refer to the Inventory and all other City-owned video or other equipment, office furniture, computers, office equipment, and telephones acquired after the execution date of this Contract and used by Contractor in the performance of its mission to operate and manage the

public access television resource, not including those assets and equipment owned by the Contractor.

**INVENTORY** shall have the meaning ascribed in section 3.C.1(b) and shall refer to all City-owned video equipment, office furniture, computers, office equipment, and telephones found in the facilities and identified on Exhibit "A," attached hereto.

**NON-CITY REVENUE GENERATING ACTIVITIES** means activities that generate funds that augment the City's Operating Funds.

**CITY OPERATING FUNDS** shall have the meaning ascribed in Section 5.B.1. and shall refer to the quarterly allocation of money by the City to Contractor for the purpose of funding Contractor's operations as required under this Contract.

**OPERATING EXPENDITURE** shall have the meaning of expenses not subject to capitalization including salaries and benefits, utilities, insurance, cleaning services, professional services, expendable supplies, equipment repairs, etc.

**WORKS OF AUTHORSHIP** means any copyrightable subject matter conceived, created, produced, controlled or owned by Contractor or its agents, representatives or employees.

**WORK PLAN** shall have the meaning ascribed in section C.2.

**AUSTIN METROPOLITAN STATISTICAL AREA** shall have the meaning as defined by the U.S. Census Bureau and includes Bastrop, Caldwell, Hays, Travis, and Williamson counties.

**COMPETITIVE MARKET RATES** means that costs charged by channelAustin for production services or rent should be comparable to those found in the local market.

### **SECTION 3. CONTRACTOR OBLIGATIONS.**

- A. Contractor is organized under the Texas Non-Profit Corporation Act, subject to the Articles of Incorporation on file with the Texas Secretary of State, and governed according to bylaws adopted and approved by its Board of Directors.
1. Contractor is an independently governed corporation, and nothing in this Contract shall be interpreted as giving the City the right to mandate changes to Contractor's bylaws, or to govern Contractor's daily operations except to the extent of the terms and conditions of this Contract.
  2. Contractor shall supply the City with a copy of all charter and bylaw revisions no later than the tenth (10th) day after the meeting date when the amendments were approved by the Board.

3. Contractor shall supply the City with a current copy of the corporate bylaws, including any approved changes or amendments, on or about October 1<sup>st</sup> of each year the Contract is effective.
- B. Board of Directors of Contractor, (the “Board”) shall provide the oversight of the Contractor’s overall policies and procedures and shall be the governing authority. The Board of Directors shall be representative of the diversity of the Austin community with members having experience ranging from legal, financial, television and media experience, and non-profit management who share the vision, goals, and mission of the non-profit association.
1. The number of directors (both minimum and maximum), board officers, and the term of service shall be set forth in the Contractor’s bylaws.
  2. At no time shall more than two (2) members of the Board be certified users of the access facilities, regardless of the number of individuals that comprise the Board at any given time. Further, at no time shall the certified users of the access facilities make up a majority of the Board members nor shall they make up a majority of the Board members voting on any given matter.
  3. The Executive Director shall manage all operations of the Contractor, shall be an employee of the Contractor, shall serve at the pleasure of the Board, and shall take direction from and report directly to the Board.
  4. The Board shall conduct an annual performance evaluation of the Executive Director, reviewing the Executive Director’s job responsibilities, performance expectations and performance achievement.
  5. The Board shall establish a program for educating new appointments to the Board at the beginning of each board member’s term on the principles and mission of public access television, on the role and legal obligations of a Board member in the management of a non-profit corporation, and the role of the non-profit organization in the community.
- C. Management and Operation of City’s Public Access Television Facilities and Equipment, Contract Funds and Other Resources Provided by City.
1. Contractor shall efficiently manage the City-owned cable television facilities and furnishings, which as of the execution date of this Contract consist of:
    - a. the main facility building, located at 1143 Northwestern, Austin, Travis County, Texas;
    - b. all City-owned video equipment, office furniture, computers, and office equipment found in these facilities and identified on Exhibit “A” (“Inventory”).

2. Contractor agrees to fully, faithfully and timely perform all of the activities and services set forth in the work plan (“Work Plan”) and budget which shall be mutually developed by the parties prior to the beginning of each fiscal year. The Contractor cannot be held responsible activities and services for which Capital Funding is required, but does not become available. On or before August 1st of each year, Contractor shall prepare and submit for review by the City a new Work Plan containing operational goals and objectives for the upcoming year, together with accountable tasks and activities that will serve as the means to achieving such goals. The description of a task or activity should give a clear idea of its deliverables or expected results and also any applicable metrics such as a target date or quantity to be achieved by the task.

- a. Budget Preparation and Submission

At least forty-five (45) days prior to the beginning of its fiscal year, Contractor shall provide Contract Manager with a copy of its proposed budget, showing Contractor’s plans for expenditure of City Operating Funds. Contract Manager shall provide comments (if needed) to Contractor that deal only with City Operating Funds within ten (10) business days of receipt of the proposed budget or prior to that month’s Board meeting.

The budget must be submitted to the Contract Manager within ten (10) business days after its approval by the Contractor’s Board. Expense categories shall follow generally accepted accounting procedures.

3. The Contractor shall pay for electricity, water, wastewater, telephone, and gas. The Contractor shall provide routine janitorial or cleaning services. Contractor and its employees and agents shall use and maintain the facilities and equipment in a safe, secure and workmanlike manner. Subject to Section 5, C, below, the City shall evaluate the possibility of paying for all electricity used in the telecommunications room (Room 113) and the Master Control room (Room 112). For this purpose, the City may establish its own Austin Energy account and recommend that all electric outlets in these two rooms as well as the power supply for the Air Conditioning units for these rooms are connected to a separate Austin Energy meter before November 1, 2011.
4. The City shall provide and maintain telecommunications services needed to run Contractor’s operations at the current level. In the event Contractor determines it needs additional band width in the future, the parties will negotiate in good faith to accommodate such increased band width.
5. Contractor shall provide limited in-house maintenance and repairs for all equipment when feasible and cost-effective, as determined by the Contractor. City shall provide funding for equipment maintenance and repairs, not to exceed fifteen thousand dollars (\$15,000) annually; contingent upon available funding. When estimated repair costs exceed twenty-five percent (25%) of the replacement value, Contractor shall submit a

replacement request to the Contract Manager for approval and purchase of replacement, contingent upon available funding.

6. The City, via Building Services, or the appropriate City department, shall be responsible for all necessary maintenance and repairs of plumbing, media distribution, electrical, structural, roof, and HVAC repairs, and security. Contractor shall notify Building Services via work order requests of necessary repairs with a copy to the Contract Manager.
7. The City and Contractor must mutually agree that replacement of any essential and non-essential equipment is necessary or advisable. The procurement process for such replacement must be initiated as soon as possible, but not later than ten (10) business days from the date it is determined that replacement equipment is needed.
8. Nothing herein shall relieve Contractor of its obligations to seek monetary and, if appropriate, non-monetary damages for any Equipment that is broken or destroyed due to the negligence or willful misconduct of any employee of Contractor, or user of the facilities.
9. Contractor will not knowingly permit any facility it manages or the cable channels under its control to be used for the production or dissemination, regardless of the technology used, of any material that violates Chapter 43, Subchapter B of the Texas Penal Code (“Obscenity”).
  - a. Contractor shall make good faith efforts to prevent the airing of such Obscene programming and shall immediately suspend any Obscene programming, including while in progress, if and when Contractor receives actual knowledge of the content and character of Obscene programming.
  - b. The public access channels are a public forum; therefore in enforcing this provision, Contractor will follow procedures which are constitutionally appropriate for the regulation of Obscenity in such a forum, including procedures which conform to the requirements approved by the United States Supreme Court in *Denver Area Educational Telecommunications Consortium, Inc. v. FCC*, 116 S.Ct. 2374 (1996) and *Freedman v. Maryland*, 85 S.Ct. 734 (1965).
10. Contractor shall provide equipment and channel time to qualified users of the facilities who have completed all necessary training and whose skills and knowledge meet minimum criteria established by the Contractor, approved on a nondiscriminatory basis. Contractor shall, in general, provide equipment and channel time on a first-come, first-served basis.
11. Contractor’s obligations with respect to channel organization, attractive scheduling, providing suitable outlets for controversial programming, special needs, and community outreach may be exempted from the “first come, first served” philosophy, but only if such exemption is granted by a majority vote of the Board.

12. Contractor has adopted a “Zero Tolerance” policy that may exempt some users from the “first-come, first-serve, content-neutral, non-discriminatory” rights noted above.
13. Contractor shall utilize the facilities, resources, and equipment under its custody, care and control to generate revenue. But such revenue generating activities must be in conformity with Contractor’s non-profit tax status and shall not interfere with the use of the public access facility during normal hours of operation or channel time by the users. Revenues generated from such activities shall be spent according to the approved budget. It is not the intent of the City to allow the Contractor to utilize City or equipment to increase the net worth of the Contractor but rather to support operations of the facility and the programs and services it provides.
14. Contractor shall maintain documentation of Operating Expenditures of City Operating Funds provided under this Contract. Documentation of the Operating Expenditures shall include the following:
  - Evidence that competitive procurement processes were used for purchases of \$2,000 and above.
  - Maintenance of receiving or shipping documents related to invoices to ensure that types and quantities of goods received agree with the invoice before payment is processed.
  - Cancelled invoices (when checks are signed and payments released)
  - Transactions are posted in the accounting system (i.e. general ledger, transactions detail by account, budget to actual, profit and loss and balance sheet).
  - Written contracts or subcontracts, including but not limited to contracts for professional services or contracted labor, that describe the work, services or products to be provided, commencement date, term of contract, and compensation or fees to be paid.
  - Employee personnel records including each employee’s hire date, job description, job acceptance with beginning salary, attendance records, payroll changes, accrual of and use of vacation and sick leave (including written approval of leave time), and termination date.
15. Contractor shall implement the necessary controls to protect its automated accounting systems as well as information stored in the accounting system, including weekly data back-up and secure storage of back-up data. Contractor shall also maintain all records required under this Contract for three (3) years following the termination of this Contract, or until the conclusion of any audit or legal proceeding regarding this Contract, whichever is later.
16. Contractor agrees to comply with the City of Austin’s Travel Policy and Procedures when using City Operating Funds for travel or entertainment. Records shall be maintained in accordance with the City’s Travel Policy located at <http://www.gsa.gov/portal/category/21287>.

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

17. Contractor shall secure, by additional insurance or by maintaining separate banking institutions, any deposits or daily balances which exceed the Federal Deposit Insurance Corporation \$200,000 threshold.
18. Contractor shall ensure that processes and reports are in compliance with generally accepted accounting principles.
19. Contractor shall keep the facility open and services available to the public for at least forty (40) hours per week. Contractor shall provide no less than eight (8) training hours per week on average. Beyond the regular forty (40) hours per week schedule, the facility will be open as needed to fulfill some of the requirements stated in Section 3D of this Contract. This includes being open for: a) public access certification training and other training for individuals, institutions, non-profit and community based organizations; b) programs that serve youth and underserved populations; and c) other programs, activities, and events involving community, education, non-profit, film, music, or media organizations. In addition, as funding permits, Contractor will make some of its key services available online and will provide some services remotely at other locations. Online services will be available 24/7. The operating schedule for remote locations (i.e. library hours) will determine the hours of operation for Contractor's remote services. Contractor will use the City's holiday schedule as a guide for holiday facility closures. Contractor, at its discretion and as needed, may close the facility for equipment inventory, staff retreats and training, or other work-related purposes; not to exceed three (3) work days per year.

D. Production Training, Programming and Public Outreach and Promotion for Public Access Certification.

1. Contractor shall educate/train individuals, institutions, non-profit and community based organizations in the production of non-commercial television programs. To this end, Contractor shall:
  - a. create and provide training curriculum for various levels of video and production proficiency including advanced training;
  - b. provide instruction in the use of production and post-production equipment and in related skills;
  - c. develop outreach programs to involve youth in video and production training;

- d. contingent upon available funding, develop and implement programs to facilitate use of public access by underserved populations including the use of fee discounts;
- e. develop and implement outreach activities, special events, and partnerships with other community, education, non-profit film and music and media organizations; produce and implement a promotion plan for access television services.

E. Development and Implementation of Non-City Revenue-Generating Activities.

1. Contractor shall pursue, develop and implement non-City revenue generating activities, which may include, but not be limited to the Services, Rentals, Partnerships, Sales, Sponsorships, Advertising and Grant activities set forth in the Contract Addendum, which is incorporated by reference. Any activity not set forth in the Contract Addendum must be pre-approved by the City.
2. The Contractor may establish a fee structure that encourages people from a range of economic levels to become users of the facilities. The Contractor may develop fee-based services for residents of the Austin Metropolitan Statistical Area. The City discourages any revenue enhancing effort that relies in whole or in part on an increase in user fees for access courses and programs.
3. Contractor may offer production services at Competitive Market Rates as determined by the Contractor to any individual, business, non-profit organization, educational institution or other entity. Contractor may also offer training as part of production services. [Subject to #1]
4. Contractor may make the facility's studios available for rent to the public at Competitive Market Rates as determined by the Contractor during any time when the facility is closed for public access purposes or when the facility is open for public access purposes but only if such rental does not conflict with certified users of the facilities. [Subject to #1]
5. Contractor may make resources and equipment available for rent to the public at Competitive Market Rates as determined by the Contractor when such resources and equipment are not reserved for use by certified users of the facilities. [Subject to #1]
6. Contractor may establish premium curriculum for courses and workshops for training beyond the scope of training for public access certified users of the facilities. All training may not correspond to specific equipment or resource certification.
7. It is understood that the channels are non-commercial and traditional advertising is prohibited. Any additional electronic space that the Contractor manages, such as its web sites, electronic newsletters, and social media sites, may contain traditional advertising. Physical space that the Contractor manages, such as the building or equipment cases and bags may also contain traditional advertising. City approval is required for any advertising on City buildings.

8. Contractor may use the channels for live, or pre-recorded on-air, membership drives in order to solicit funds.

F. Automated Services, Operational Efficiency, and Technology Plan.

1. Contractor shall develop and implement:
  - a. user self-service facilities and related process automation resources that will reduce the cost to provide services to users of the facilities and improve management and operations efficiency;
  - b. online and remote services that will reduce the number of hours per week the building needs to be open for public access;
  - c. an enterprise software system that will help the Contractor better manage projects, create reports, and streamline operational tasks;
  - d. a plan to regularly upgrade and improve equipment, resources, and systems through use of Capital Funding;
  - e. procedures to maintain resources and equipment, and perform affordable in-house repairs, and when necessary out-source repairs paid for by the City; contingent upon available funding; and,
  - f. methods to maintain technical quality of the production and cablecast to current industry best practices and standards.
  - g. Contractor shall only be obligated to perform the foregoing if Capital Funding for the development and implementation is provided to Contractor prior to the end of the first quarter of fiscal year 2012.
2. In addition to the sums mentioned in section 5.B.1., the City will request additional funding to improve facility operations in accordance with a capital expenditure plan mutually agreed upon by City and Contractor (“Capital Equipment Funding”). Capital Equipment funding will be allocated by the City from funds received from state cable franchise holders designated to support Public, Educational and Government (PEG) access television. Specific allocations to the Contractor are at the City’s sole discretion. The purpose of Capital Equipment Funding is to maintain and repair equipment purchased with the Capital Equipment Funding, and to improve facility operations, including the acquisition of new production equipment, systems technologies, and upgrades, including associated training and maintenance agreements for equipment purchased with the Capital Equipment Funding. The City shall not hold Contractor responsible for implementing the Automated Services, Operational Efficiency, and Technology Plan absent funding from the City for that purpose. Beginning in fiscal year 2012, Contractor shall provide Contract Manager with a list of equipment or technology upgrades that Contractor proposes for the following fiscal year, and such list shall be submitted to City by April 1.

SECTION 4. REPORTING REQUIREMENTS.

- A. Contractor shall be accountable to the Contract Manager and shall at all times maintain full, accurate and current records documenting the level of Contractor's Services provided under this Contract. Reports shall be submitted in electronic format, either via electronic mail attachments, size limitations permitting, or portable storage media.
- B. Six Month Activity Report. Contractor shall file with the City no later than fifteen (15) working days after the second quarter of each fiscal year throughout the Contract term a report detailing important benchmarks. The quarterly report should include:
  - 1. Programming: number of hours of new programs, billboards, and showcase; number of hours of Main, Mini, and Micro live studio programs.
  - 2. Resource allocation: number of days of field package, post production, and studio usage the schedule and total number of days that facilities, studio and field production equipment and all other access resources are available for use, alongside the total number of days the same are in actual use;
  - 3. Training (for public access certification only): number of classes offered, number of users enrolled, number of certifications / completions made available to producers and the public, including the type of training, and the number of people in attendance.
  - 4. All complaints received by the Contractor during the reporting period, including copies of any written complaints; and
  - 5. Community: number of active users, number of scholarships given, and number of new users.
  - 6. any other information that the Contractor believes relevant to show achievement of stated performance goals.
- C. Other Reports.
  - 1. Contractor shall provide reports upon request, but no more than four (4) reports annually, to the Council Committee on Emerging Technology & Telecommunications and the Austin Community Technology & Telecommunications Commission during regularly scheduled public meetings.
  - 2. Contractor shall provide the Contract Manager with the Board's meeting agenda not less than three (3) working days prior to the scheduled meeting date. A copy of Board-approved minutes shall be delivered to the City no later than the fifth (5<sup>th</sup>) working day after the Board meeting where the minutes were approved.
- D. Annual Inventory Report. Contractor shall submit annually to the Contract Manager an inventory of all production and office resources, including all Equipment and furnishings, no later than the ninetieth (90th) day after the close of the fiscal year (Oct. 1 to Sept. 30).
- E. Annual Report. Contractor shall file no later than the ninetieth (90th) day after the close of the fiscal year (October 1 through September 30) an annual report containing:

1. the Contractor's organization chart, listing Board Members, executive officers, and staff by function;
2. the number of people employed by Contractor, both full and part-time;
3. a summary of the Six Month Activity report;
4. a summary of all public outreach efforts;
5. a list of all fees charged by Contractor to users, with the percentage change from the previous annual report;
6. a copy of the grievance procedure currently used by the Contractor;
7. if any changes are made, a general description of the types of complaints received and the resolution thereof;
8. a report on the development or incorporation of new technology, including automated or self-service technology;
9. the number of persons using the Facilities categorized by place of residency (place of residency shall be categorized by zip code);
10. a copy of equipment maintenance logs;
11. a copy of the Contractor's annual equipment inventory;
12. a list of public access certification training classes, rates and schedules;
13. the annual fundraising report, detailing all funding sources and how the funds were allocated.

F. Quarterly Financial Reports. The Contractor shall file no later than the fifteenth (15th) business day after the end of each quarter a financial report derived from the annual plan and budget adopted by the Board for the current Fiscal Year. The quarterly reports shall be due to the City in January, April, July and October of each year, and shall list, by each month and year-to-date total:

1. sources and amount of income;
2. sources and amount of expenses; and
3. reconciled bank statements for the quarter.

G. Annual Audited Financial Statement. No later than the ninetieth (90th) day after the close of the Contractor's fiscal year, Contractor shall present to the City a written annual report (the "Annual Financial Report"). The Annual Financial Report shall present a composite picture of Contractor's operations for the 12- month period that constitutes the Contractor's fiscal year, and shall include:

1. an audited financial statement prepared by an independent Certified Public Accountant according to generally accepted accounting principles;
2. auditor's engagement letter should specify that the Contractor will receive copies of audit work papers, which auditor will also send to City.
3. the auditor's management or audit letter and any other report or document describing whether any internal control violations were discovered;
4. the auditor's recommendations, if any, on improving operational management and control;
5. a description of the Contractor's plan for promptly implementing the Auditor's recommendations, if any, or timely correcting deficiencies discovered by the Auditor;

6. the anticipated start and completion date for implementing the Contractor's plan; and
7. a presentation by the auditor to the Board of Directors on the auditor's findings, recommendations, and any other information deemed suitable by the auditor.

**SECTION 5. CITY OBLIGATIONS**

- A. **Contract Administration.** The Office of Telecommunications and Regulatory Affairs (TARA) shall manage this Contract on behalf of the City. The Contract Manager of TARA will make all compliance and performance determinations regarding this Contract.
- B. **Liability of City for Funding Under Contract Limited.**
  1. Notwithstanding any other provision of this Contract, the total of all payments to be made to Contractor under this Contract shall not exceed a total of \$1,800,000.00 through the end of the final extension term, or such other amount as City Council may approve ("Operating Funds"). The maximum amount payable for the first term, which is October 1, 2011, through September 30, 2013, is \$900,000.00. Upon written agreement, the parties may decide to extend the Contract for up to two (2) additional one-year terms, and the maximum amount payable for each extension term shall not exceed \$450,000.00. The Contractor and the City each acknowledge and agree that payment of the City Operating Funds constitutes full and satisfactory financial consideration for the performance of all the Contractor's obligations under this Contract.
  2. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice, by August of each fiscal year, after Council adoption of the following fiscal year budget, of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
  3. This Contract does not obligate the City to remit payment from its General Fund, or from any other moneys or credits belonging to the City. The City shall not be liable for, and Contractor releases, indemnifies and hold the City harmless from, any claims or demands for:
    - a. costs, paid or expenses reimbursed by any third party;
    - b. expenses incurred either prior to or after the term of this Contract, and the parties agree that this does not apply to a hold-over period, as the Contractor shall be paid Operating Funds during any holder over period; or

- c. expenses incurred for items or services outside the scope of services to be provided by Contractor, as referenced in Section 3, including those identified in the Work Plan.
- C. Contingent upon available funding, City will conduct a facility assessment for energy and water efficiencies and make improvements no later than Fiscal Year 2012 to make the facility more energy efficient and reduce monthly utility costs, with emphasis on electricity use. These improvements will be made with the Capital Funding received for PEG support from state franchise holders.

**SECTION 6. PAYMENTS TO CONTRACTOR.**

- A. Maximum Annual Payment. Unless another amount is approved by the City Council, and this Contract is amended, the maximum amount of City Operating Funds payable by City during any Contract year shall be \$450,000.00. As funds become available for Capital Funding, the City shall request funds to be used for self service automation, on-air service equipment, and other Capital Funding projects as determined solely by the City.
- B. Method of Payment.
  - 1. At the beginning of each calendar quarter, the City shall pay Contractor one-fourth of the annual City Operating Funds allocated for the Contract year. Contractor shall submit a request for quarterly payment of \$112,500.00 to Contract Manager up to ninety (90) days prior to the beginning of each calendar quarter (January 1, April 1, July 1 and October 1). City shall pay Contractor the quarterly amount within thirty (30) days of receipt of the request for payment or on the first business day of the calendar quarter, whichever occurs later.
  - 2. In recognition of the City's obligation to appropriately allocate funds, Contractor grants the City a lien and security interest on the funds held in the Contractor's bank account(s) containing the Operating Funds to secure the repayment to the City of any moneys which may be due the City by Contractor. This lien shall be superior to all other claims of Contractor's creditors.
- C. Contract Close Out.
  - 1. Contractor shall submit the Contract Close Out Package, as prescribed by the Financial Services Department of the City, including a final expenditure report following the close of the time period covered by the last invoice requesting a draw down of funds under this Contract, to the Contract Manager not later than the sixtieth (60th) day after the termination of this Contract.
  - 2. Upon termination of this Contract, any unused funds, rebates, credits (or interest earned) on City Operating Funds or Capital Funding held by Contractor must be returned to the City. Contractor may withhold City Operating Funds sufficient to

cover the actual cost incurred to preserve and maintain operations after Contractor receives notice of Contract termination but before the actual termination date.

**SECTION 7. USE OF ACCESS FACILITIES, EQUIPMENT AND TRAINING.**

It is the responsibility of the Contractor to develop and maintain a comprehensive set of policies and procedures for the use of all facilities, equipment, programming, and available training, consistent with this Contract. The Contractor may amend these rules, procedures and guidelines as needed. Contractor shall provide to Contract Manager any changes to the policies and procedures that require Board approval at least ten (10) business days after approved by the Board.

**SECTION 8. OWNERSHIP OF PROPERTY.**

- A. Contractor shall provide the Contract Manager with an inventory of all City-owned Equipment located at the access facilities as part of the annual report. All Equipment purchased with City Operating Funds or Capital Funding is the property of the City. Upon termination of the Contract, Contractor shall deliver possession of all such Equipment to the City unless otherwise agreed to in writing by the Contract Manager. Equipment purchased by Contractor with funds other than City Operating Funds or Capital Funding is and shall remain the sole property of Contractor.
- B. Contractor shall notify Contract Manager in writing within five (5) calendar days of its receipt of any durable property owned by the City to enable the City to identify and record such property as fixed assets, as appropriate. The Contractor shall:
  - 1. maintain custody and control over all property provided by the City;
  - 2. maintain detailed property records; and
  - 3. perform an annual physical inventory.
- C. Contractor shall notify the Contract Manager in writing not later than twenty-four (24) hours following the discovery of any loss of or damage to City facilities or equipment. Contractor shall seek to recover from parties responsible for such loss or damage, and shall inform the Contract Manager in writing of status of the Contractor's efforts not later than the fifteenth (15th) calendar day following the date of initial notice of such loss or damage. Contractor shall provide progress reports on its efforts to seek remuneration for such loss or damage to the Contract Manager.

**SECTION 9. CITY AUDIT AND INSPECTION.**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records or documents of the Contractor related to the performance under this Contract. Upon termination of this Contract, the Contractor shall provide the originals of all such records to the City's Contract Manager, and shall retain copies of such

records as required by law. The Contractor shall refund the City for any unauthorized uses of City Operating Funds or Capital Funding disclosed by an audit.

- B. In the event Contractor subcontracts with another entity to perform any of its obligations under this Contract and uses City Operating Funds to pay such entities, the Contractor will include language in such agreements, that is equivalent to that in section 9.A. above, requiring the maintenance and provision to City of appropriate records regarding the use of Operating Funds.

**SECTION 10. PERFORMANCE REPORTS AND EVALUATIONS.**

- A. The Contractor shall submit periodic reports as specified in section 4 above (“Reporting Requirements”).
- B. The Contractor shall furnish such statements, records, reports, data and information to the City within ten (10) business days after requested and in such form as the Contract Manager may reasonably require.
- C. The City may perform on-site evaluations of Contractor’s performance under this Contract during normal hours of operation upon twenty four (24) hours written notice.
- D. The Contract Manager may carry out monitoring and evaluation activities, as the Contract Manager deems necessary or appropriate to ensure Contractor’s compliance with the terms of this Contract. The monitoring and evaluation will be to ensure that Contractor is meeting the requirements of the Contract and the performance standards.
- E. The Contract Manager may perform an on-site audit of books, records and equipment during business hours, upon twenty four (24) hours written notice.
- F. The Contract Manager may conduct annual performance evaluations based on the metrics specified in the Contractor’s annual Work Plan and the terms and conditions of the Contract. Such performance evaluations shall be conducted sixty (60) days prior to the end of the Contract term.

**SECTION 11. REPRESENTATIONS AND WARRANTIES.**

- A. The Contractor represents and warrants that:
  - 1. All information, reports and data furnished to the City by Contractor are complete and accurate as of the date furnished to the City, and that Contractor shall promptly notify the Contract Manager in the event of any material change affecting the accuracy or completeness;
  - 2. All financial statements and information furnished to the City are complete, accurately reflect the financial condition of the Contractor on the date shown on said

report, accurately show the results of the operation for the period covered by the report, and that since said date there has been no material change, adverse or otherwise, in the financial condition of the Contractor;

3. Contractor has promptly notified the Contract Manager of any and all pending or threatened legal proceedings against the Contractor;
4. None of the provisions herein violates, or is in conflict with, the authority under which the Contractor is doing business, or the terms of any obligation or agreement of the Contractor;
5. The Contractor has the power to enter into this Contract and accept payments hereunder, and the Contractor has taken all necessary action to authorize such acceptance under the terms and conditions of this Contract;
6. None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes, except as shown in the financial statements furnished by the Contractor to the City;

B. Conflict of Interest:

1. Neither Contractor nor any member of its Board presently has any interest, and the Contractor and its Board agree that they shall not acquire any interest, direct or indirect, that conflicts in any manner or degree with the performance of Contractor's services, as described herein. Contractor further warrants that during the term of this Contract no person having such interest shall be employed or appointed as a member of its Board of Directors.
2. No member of Contractor's Board or its staff, subcontractors or employees shall possess any interest in, or use their position for a purpose that is, or gives the appearance of being, motivated by desire for personal, financial or any other gain for themselves, or others, particularly those with which they have family, business, or other ties.
3. Contractor's Board or employees shall not be afforded preferential treatment with respect to resources.
4. No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall: (i) participate in any decision relating to the Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or (ii) have any personal financial interest, direct or indirect, in this Contract or the proceeds.

- a. To the extent required by Chapter 552 of the Texas Government Code, Contractor shall comply with the Texas Public Information Act, Chapter 552, Texas Government Code in writing or verbally, within ten (10) work days, depending on how the inquiry was made to the Contractor, to public inquiries regarding its operations.
  - b. Before Contractor's Board adopts any rules and procedures governing the provision of services pursuant to this Contract, all interested parties, such as active certified users of the facilities, shall be given an opportunity to be heard.
  - c. Each of these representations and warranties shall be continuing in nature and shall be deemed to be reaffirmed each time the Contractor accepts payment for services provided under this Contract.
5. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

## **SECTION 12. INSURANCE.**

A. Specific Requirements: The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract. These insurance coverages are required minimum and are not intended to limit the responsibility or liability of the Contractor.

1. **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
  - a. Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project
  - b. Independent Contractor's Coverage
  - c. Products/Completed Operations Liability for the duration of the warranty period
  - d. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
  - e. Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
  - f. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
2. **Business Automobile Liability Insurance.** The Contractor shall provide coverage 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. Alternate

acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

- a. Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
- b. Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
- c. The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

3. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- a. The Contractor's policy shall apply to the State of Texas
- b. Waiver of Subrogation, Form WC 420304, or equivalent coverage
- c. Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

4. **Commercial Crime Insurance.** Contractor shall maintain insurance coverage for all losses emanating from the handling of checks or cash including but not limited to losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds. The City shall reimburse Contractor for the cost of the Commercial Crime Insurance. This policy shall be written for a limit of \$300,000.

- a. The policy shall provide the following endorsements:
  - (i) Include specified directors or trustees on committees as employees – All Directors or Trustees on Committees
  - (ii) Include non-specified non-compensated officers as employees – All Non-Compensated Officers
  - (iii) City shall be added as loss payee as their interest may appear.

5. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

- B. The Contractor shall provide a Certificate of Insurance with the types and amounts of coverage and the endorsements required herein within fourteen (14) calendar days of signing the Contract, unless otherwise specified.
- C. The Certificate of Insurance, and annual updates, shall be emailed to [jeffery.dilbert@ci.austin.tx.us](mailto:jeffery.dilbert@ci.austin.tx.us), or mailed to the following address:

City of Austin  
Purchasing Office  
Attn: Jeffery Dilbert  
P. O. Box 1088  
Austin, Texas 78767

- D. The Contractor shall not commence work under this Contract until it has obtained all required insurance and until such insurance has been approved by the City of Austin Risk Management Office and the Contract Manager; this Contract shall be deemed voidable by the city if proof of insurance is not submitted within fourteen (14) working days of the execution of this Contract.
- E. If the insurance policies are not written for the amount specified in subsections A.2 and A.3 above, the Contractor is required to carry an Excess Liability insurance policy for any difference in the amounts specified.
- F. The required insurance must be written by a company licensed to do business in the State of Texas at the time the policy is issued, and all insurance (other than Worker's Compensation) shall name the City as an additional insured.
- G. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until thirty (30) days after the City has received written notice as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the operations to which the insurance applies the expiration date and the above-mentioned notice of cancellation clause.
- H. The City reserves the right to review the insurance requirements of this section during the effective period of the Contract and to adjust required insurance coverages and their limits when deemed necessary and prudent by the City's Purchasing Contract Administrator based upon changes in statutory law, court decisions, or the claims history of the industry or Contractor. Any charges or costs incurred based on these changes shall be paid by the City.

- I. Equipment Insurance. The City will maintain all risk property insurance (e.g., fire, flood, disaster, theft, etc.) on all access television production City Equipment provided for use by Contractor.

**SECTION 13. WORKFORCE**

- A. The Contractor shall employ only competent workers, skilled in the performance of the services that they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
  1. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; or
  2. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**SECTION 14. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:**

The Contractor, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA), in the performance of the services required under this Contract. 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 (collectively, "Indemnified Claims"). Notwithstanding anything to the contrary, the Contractor shall have no liability to the City and no obligation to indemnify and hold the City harmless if any claim, demand, suit, action, judgment, fine, penalty or liability is caused by the City's failure to satisfy or perform its obligations under this Contract, including the City's promise to maintain the access facility used by Contractor in accordance with any and all legally required regulations.

## **SECTION 15. LIVING WAGES AND BENEFITS**

A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a “living wage” and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this Contract.

B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this Contract. Proof of the health care plan shall be provided prior to award of a contract. In addition, an insurance certificate for Workers’ Compensation Insurance Coverage must be provided if required by the solicitation.

C. The City requires Contractors to provide a signed certification within five (5) calendar days of Contract execution certifying that all employees directly assigned to this Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan (see Exhibit B, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant Contract including their name and job title, due by first day of new Contract period. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

D. The Contractor shall maintain throughout the term of the resultant Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

- each employee’s hire date
- job description
- job acceptance with beginning salary
- attendance records
- payroll changes
- additions to or deductions from employees’ wages
- accrual of and use of vacation and sick leave (including written approval of leave time), and
- termination date.

E. The Contractor shall provide with the first invoice individual Employee Certifications for all employees directly assigned to the Contract containing (see Exhibit C, Living Wages and Benefits Employee Certification):

1. the employee’s name and job title;
2. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;

3. a statement certifying that the employee is offered a health care plan with optional family coverage.

F. The employee certifications shall be signed by each employee directly assigned to the Contract.

G. Contractor shall submit employee certifications when new employees are hired.

H. The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

## **SECTION 16. NONDISCRIMINATION AND EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit D. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

C. All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

D. The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

E. If any service, which will require longer than thirty (30) days to complete, is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good

Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

**SECTION 17. POLITICAL ADVERTISING.**

No funds received by the Contractor from the City shall be used for political advertising. Political advertising includes, but is not limited to, any communication with the public to further the appointment, election, defeat or removal of any applicant, incumbent, or candidate for public office, or any communication with the public to influence the passage, defeat or final content of any legislation, or of a City ordinance or measure.

**SECTION 18. RIGHTS TO PROPOSAL, CONTRACTUAL MATERIAL, AND COPYRIGHTABLE MATERIAL, PATENTS.**

- A. When copyrightable documents, audio/video productions or any materials are produced by Contractor for the purpose of providing services under this Contract, Contractor and City shall have joint ownership of any copyrighted materials for the term of this Contract and any extensions thereof, and any similar Contract to manage public access. Upon the termination of this Contract, Contractor shall have sole ownership of all Works of Authorship; provided however, that City is hereby granted a perpetual, royalty free license to use for any municipal purpose (other than commercial exploitation) Contractor's Works of Authorship. The parties agree that the term 'commercial exploitation' shall not restrict City's ability to allowing the public to obtain copies of Works of Authorship upon payment of duplication fees.
  
- B. If any discovery or invention arises or is developed in the course of, or as a result of, work performed pursuant to this Contract or through use of property or equipment owned by the City, the Contractor shall notify the Contract Manager in writing of such discovery or invention. The Contractor hereby agrees that the determination of rights to any invention developed under this project shall be made by the Contract Manager who shall have sole and exclusive power to determine whether and where a patent application may be filed, and the disposition of all rights under any patent application or patent granted for such inventions. The determination of the Contract Manager under this subsection shall be final.

**SECTION 19. INDEPENDENT CONTRACTOR.**

The Contract 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 Contract does not grant any rights or privileges established for employees of the City.

**SECTION 20. SUBCONTRACTING.**

A. Contractor in its discretion, using its expertise to carry out the scope of work, may retain one or more independent contractors to perform occasional, temporary, or part-time production crew, production equipment trainers, and education, training and production personnel without City's prior approval. Contractor retains full and complete responsibility to perform the requirements and services under this Contract.

B. Contractor in its discretion may retain one or more commissioned contractors to perform occasional temporary or part time account executive responsibilities pertaining to acquiring sponsorships and underwriting and other sales as needed. Contractor retains full and complete responsibility to perform the requirements and services under this Contract.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors, including insurance, just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

**SECTION 21. CONTRACTOR CHANGES .**

Contractor shall notify the Contract Manager of any change in the Contractor's Board of Directors' or of the Contractor's Executive Director within ten (10) working days of its occurrence. Contractor shall notify Contract Manager of any change in Contractor's corporate structure, or any Board of Director resolution affecting performance of this Contract, within ten (10) working days of its occurrence.

**SECTION 22. SUSPENSION OF FUNDING.**

In the event that Contractor fails to timely and properly perform any of its obligations under this Contract, the City, without limiting any rights it may otherwise have, may withhold further payments to the Contractor. The Contract Manager shall give Contractor notice in writing of its decision to suspend funding. Such notice shall be given by certified mail return receipt requested, hand delivery, or facsimile communication to the Contractor's Executive Director. The notice shall identify the nature of the default and the action required for cure. If the default has been cured to the City's reasonable satisfaction, the Contractor will be restored to full compliance status and paid any withheld funding. If however, the Contractor has not cured the default within ten (10) days, the City may terminate this Contract under section 23 below, or exercise such other remedies available to the City under law or in equity. In case of partial default, monthly payment amounts may be adjusted upon a determination by the Contract Manager that Contractor's performance does not satisfy the terms of this Contract. Such determination shall be in writing and identify all failures of performance and the amount by which payment is reduced for these failures.

**SECTION 23.           TERMINATION.**

- A. The City may terminate this Contract for cause if Contractor:
1. fails to cure a default;
  2. materially breaches any provision of this Contract;
  3. materially breaches, a provision of a Contract with a third party and has not cured such breach after notice and opportunity to cure;
  4. is in a financial condition that endangers the performance of this Contract;
  5. is delinquent, in payment of taxes or of costs of performance of this Contract in the ordinary course of business.
- B. Either party may terminate this Contract for convenience by giving at least thirty (30) calendar days notice in writing to the other party. At the end of thirty (30) days, Contractor will be paid an amount not to exceed its total accrued costs for services covered under this Contract during such thirty (30) day period. This payment shall be decreased by any payments made in advance to Contractor for the thirty (30) days.
- C. Upon receipt of notice of termination, the Contractor shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts relating to the performance Contractor's obligations under this Contract. The City shall not be liable to the Contractor or Contractor's creditors for any expenses, encumbrances or obligations whatsoever, incurred after the date Contractor receives notice of termination. Failure to terminate outstanding orders or subcontracts relating to the performance of this Contract is a material breach of this Contract.
- D. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover 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. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**SECTION 24. RIGHT TO ASSURANCE.**

Whenever one party to the Contract 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 Contract.

**SECTION 25. WAIVER.**

No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**SECTION 26. MODIFICATIONS.**

The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**SECTION 27. INTERPRETATION.**

The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract 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.

**SECTION 28. DISPUTE RESOLUTION.**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a

written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

#### **SECTION 29. NOTIFICATION OF ACTION BROUGHT.**

In the event that any claim, demand, suit or other legal action, including without limitations, any communications concerning copyright infringement, or criminal indictment is brought by any person(s), or entity against the Contractor, Contractor shall deliver copies of such to the Contract Manager within twenty four (24) hours after receipt.

#### **SECTION 30. OTHER NOTICES.**

Contractor shall notify the Contract Manager within two (2) working days, by providing the copies of documents concerning:

- A. Contractor filing for relief under the Bankruptcy Code;
- B. the appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property;
- C. any reorganization, or liquidation proceedings by or against the Contractor; and
- D. the filing of any lien or attachment against any property or bank account of Contractor.

#### **SECTION 31. ASSIGNMENTS.**

Contractor shall not transfer, pledge or otherwise assign this Contract or any interest therein, or any claim arising there under, to any other party, bank, trust company or other financial institution. Any purported transfer or assignment made in violation of this section is null and void.

#### **SECTION 32. NO THIRD PARTY BENEFICIARIES.**

This Contract does not confer any enforceable rights to any person or entity, which is not a party to this Contract.

**SECTION 33. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

The Contractor shall comply with all applicable laws, rules, regulations, procedures and policies of the Federal, State and local governments.

**SECTION 34. LEGAL AUTHORITY.**

The persons executing this Contract on behalf of Contractor represent and warrant that they are duly authorized and empowered to execute this Contract, that Contractor has taken all action necessary to approve this Contract, and that this Contract is a lawful and binding obligation of Contractor.

**SECTION 35. SEVERABILITY OF PROVISIONS.**

If any provision of this Contract, or its application to any person or set of circumstances is held to be unconstitutional, invalid, or unenforceable, that holding shall only affect the words, phrases, clauses, or provisions so held, and such holding shall not affect the remaining portions of this Contract, this being the intent of the Parties in entering into this transaction; and all provisions of this Contract are declared to be severable for this purpose.

**SECTION 36. NON-WAIVER OF PERFORMANCE.**

In no event shall any payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No waiver by the City of any one or more of Contractor's defaults shall operate as an express or implied waiver of any other existing or future default. Waiver by the City shall not be deemed a practice or course of dealing between the parties contrary to the express terms of the Contract.

**SECTION 37. INDEMNITIES.**

- A. Contractor for itself and its agents, employees, subcontractors, and the agents and employees of any subcontractors, shall defend, indemnify and hold the City, its successors, assigns, officers, employees and elected officials, harmless from and against any and all claims, demands, suits, causes of action and judgments, whether in Contract or in tort (including negligence and strict liability), arising out of, incident to, concerning or resulting from the performance of any services under this Contract or the negligence or willful misconduct of Contractor, its agents employees, and/or subcontractors, in the performance of services under this Contract, including, but not limited to, claims for:
1. damage to or loss of the property of any person (including but not limited to Contractor, its agents, officers, employees and subcontractors, and third parties);
  2. death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of Contractor, Contractor's Subcontractors and third parties); and

3. violations of any laws, rules regulations, procedures and policies of the Federal, State and local governments.

B. Contractor shall not be obligated under this section to indemnify and hold the City harmless for claims, damages, and losses, if any, to the extent that the claim, damage, or loss was caused by the negligence or willful misconduct of the City.

**SECTION 38. ENTIRE AGREEMENT.**

This Contract, together with the attached exhibits constitutes the entire agreement between the parties hereto with respect to the matters covered by its terms. No other agreement, assertion, statement, understanding, or other promise made by any party, or to any employee, officer, or agent of any party that is not embodied in this Contract shall have force or effect.

**SECTION 39. VENUE.**

The Contract is made under and shall be governed by the laws of the State of Texas, including excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract 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 either party to seek and secure injunctive relief from any competent authority as contemplated herein.

**SECTION 40. CONSTRUCTION OF AGREEMENT.**

Although this Contract may have been substantially drafted by one Party, it is the intent of the parties that all provisions be constructed in a manner fair to both Parties, reading no provision more strictly against one Party or the other.

**SECTION 41. NOTICES.**

For purposes of this Contract, all communications and notices among the parties shall be deemed made if sent postage prepaid to the parties and addresses set forth below:

The Contractor

Public Access Community  
Television, Inc.  
Linda Litowsky  
Executive Director  
1143 Northwestern Ave.  
Austin, Texas 78702

City of Austin, Purchasing Office

ATTN: Contract Administrator  
P.O. Box 1088  
Austin, Texas 78767-8837

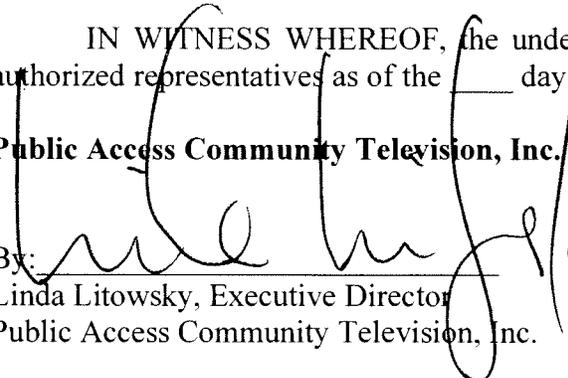
City of Austin, TARA

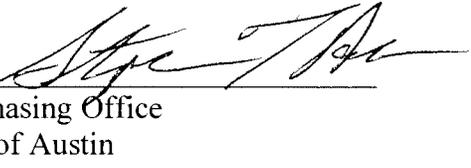
ATTN: Rondella Hawkins  
P.O. Box 1088  
Austin, TX 78767-8837

IN WITNESS WHEREOF, the undersigned have executed this Contract by their duly authorized representatives as of the \_\_\_ day of August, 2011.

**Public Access Community Television, Inc.**

**City of Austin**

By:   
Linda Litowsky, Executive Director  
Public Access Community Television, Inc.

By:   
Purchasing Office  
City of Austin

**Exhibits**

- Exhibit A – Inventory
- Exhibit B – Living Wage Certification, Contractor
- Exhibit C – Living Wage Certification, Employee
- Exhibit D – Non-Discrimination Certification
- Contract Addendum
- Underwriting Guidelines

**Exhibit A**  
**Inventory**

**EXHIBIT B**  
**CITY OF AUSTIN, TEXAS**  
**Living Wages and Benefits Contractor Certification**  
*(Please duplicate as needed)*

Pursuant to the Living Wages and Benefits the Contractor is required to pay to all employees directly assigned to providing Services pursuant to this Contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this Contract:

are compensated at wage rates equal to or greater than \$11.00 per hour; and  
are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title

all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.

Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

If Contractor violates this Living Wage provision Contractor shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the Contractor to possible suspension or debarment.

Company Name		
Signature of Officer or Authorized Representative	Title	Date
Type or Print Name		

**EXHIBIT C  
CITY OF AUSTIN, TEXAS  
Living Wages and Benefits Employee Certification**

Contract Number:	Description of Services:
Contractor Name:	

Pursuant to the Living Wages and Benefits provision of the Contract, the Contractor is required to pay to all employees directly assigned to providing Services pursuant to this Contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this Contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee Name	Title
Signature of Employee	Date
Type or Print Name	

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Printed Name)

**Exhibit D**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**  
**SOLICITATION NO. JSD0104**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 12 August day of 2011.

[Signature]  
CONTRACTOR  
Puban Access Community  
Authorized Signature  
Title EXECUTIVE DIRECTOR

CONTRACT TO MANAGE THE COMMUNITY ACCESS  
TELEVISION FACILITIES & MEDIA MANAGEMENT SERVICES  
CONTRACT ADDENDUM

This is an addendum to the 2011 Contract To Manage The Community Access Television Facilities & Media Management Services (the “Contract”) between the City of Austin (the “City”) and Public Access Community Television, Inc. (“channelAustin”)

**Preamble:** The City possesses facilities and equipment for the production of video and exhibition by cablecast to cable subscribers in the Austin area. channelAustin has maintained and operated these facilities and equipment for the City under contract and the parties desire for channelAustin to continue to do so. The City recognizes that due to budget constraints, channelAustin is unable to fulfill all obligations without additional revenue to cover operating costs. Furthermore, the City acknowledges that due to technological advances, community access cable is only one of several available methods of community media exhibition and that support of expanded community media opportunities is an important use of municipal resources. channelAustin seeks to provide expanded opportunities for community media in conjunction with its services to the City under this Contract and the City supports that role. This Addendum sets forth terms by which channelAustin is authorized to utilize municipal facilities and resources to support expanded community media opportunities and generate revenue to supplement the funds dedicated by the City under the Contract.

Now therefore, the City and channelAustin agree to the following additional terms of the Contract:

- **Users** channelAustin will develop multiple levels of User access to the City facilities and equipment. At minimum, channelAustin will provide Basic User access on an affordable basis for members of the public to utilize the City facilities and equipment for the creation of media and exhibition on public access cable channels. Basic Users will be required to fulfill training requirements for use of the City facilities and equipment. Other Users will only want to use the facilities and equipment to generate media to be exhibited on platforms other than public access cable. Furthermore, some Users will generate their media using their own equipment and submit it to channelAustin for community access cable exhibition. Finally, some community nonprofit or other eleemosynary (relating to or supported by charity) institutions will seek access to City facilities and equipment for their community purposes. The City agrees that in addition to Basic Use access, channelAustin will create other tiers and/or individually tailored plans for User access with varying requirements and fee schedules.

- **Membership Drives** ChannelAustin may use the facility, equipment and resources, including studios and airtime, to conduct membership or pledge drives to generate revenue. ChannelAustin may use airtime to solicit funds. ChannelAustin is subject to any provisions in **Attachment B, Local Underwriting Guidelines**, where those guidelines may conflict with ChannelAustin’s ability to conduct an effective membership or pledge drive.

- **Training** channelAustin provides affordable training to Basic Users for equipment operation and regulatory compliance necessary to produce and exhibit video on public access cable. In furtherance of its mission to provide expanded community media access, channelAustin will also provide training for other members of the community separate from the Basic User training. channelAustin will have the discretion to develop curricula and fee structures for any such additional training. channelAustin will provide Basic User training with employees as governed by the Contract. However for all other training activities channelAustin shall have the discretion to utilize part-time, temporary and/or independent channelAustin staffing for such training activities.

- **Services and Rentals** ChannelAustin may use the facility, equipment and resources to provide production, post-production, audio production, and web and Internet services, so long as such use does not adversely impact that of Basic Users. For such services channelAustin may charge competitive market rates. ChannelAustin may hire, at its discretion, part-time or temporary staff to assist when needed.

channelAustin may offer for rent the use of studio space, other physical space, field equipment, and new resources purchased with capital funds. Such rentals shall be offered at competitive market rates and shall occur in such a manner so as to not adversely impact Basic Users. Studio and physical space may be rented at times when the building is not open to Basic Users. Field equipment that is not reserved in advance by Basic Users may then become available for rent.

In keeping with the public purpose of community media access, channelAustin may provide such services and rentals to the following types of producers without pre-approval from the City:

- 501(c)(3) organizations
- Government entities
- Educational entities
- Independent filmmakers with a budget of \$25,000 or less
- Non-commercial entities involved in youth, senior citizen, disability, and/or underserved population education
- Churches and other religious organizations

channelAustin will establish a Rate Card for the rental and use of the City facility, equipment and resources. channelAustin will provide the proposed Rate Card and any revision to the City and the Rate Card and any revision thereto shall be deemed in effect two calendar weeks following it being provided to the City unless channelAustin receives a written objection to the terms of the proposed Rate Card. All revenue generated by rental and use of the City facility, equipment and resources shall be allocated as City Operating Funds. All revenues generated by services provided by channelAustin staff will be allocated to channelAustin to further its nonprofit purpose of community media access ("channelAustin Funds"). channelAustin shall have the discretion to utilize part-time, temporary and/or independent channelAustin staffing for such services.

The City shall have access to records for the use of channelAustin Funds, however the City shall not have any authority to audit, impose conditions, or limit channelAustin's use of channelAustin Funds. The City shall not have authority to audit, impose conditions, or control channelAustin's bidding or pricing of its services to third parties.

- **Basic User Services** ChannelAustin may create additional fee-based services, either as stand-alone services, or as features of advanced membership levels, for services beyond basic public access obligations such as leased data storage, after hours use, technical support during live productions, and extra studio air time.

- **Partnerships** ChannelAustin may leverage its capacity to provide training and services and enhance its ability to generate revenue by partnering with nonprofit organizations, local businesses, government entities and educational institutions.

- **Sales** ChannelAustin may use the facilities and resources as a vehicle for generating commodity sales. Capital funds may be used to purchase a vending machine or other instruments that may help establish a self-service sales system.

- **Sponsorships** ChannelAustin may use the facilities, equipment, and resources to establish, develop, and maintain an effective sponsorship and underwriting program, done in accordance with Local Underwriting Guidelines. ChannelAustin may implement a more structured and thematic approach to the programming schedule to make the program grid more attractive to potential sponsors. ChannelAustin, at its discretion, may hire account executives payable on a commission basis to search for and secure sponsors.

- **Advertising** ChannelAustin may use the interior of the building, including interior walls, doors, and other flat surfaces for advertising content subject to prior approval of the City. ChannelAustin may also use the outside of equipment cases or containers as advertising surfaces. ChannelAustin, at its discretion, may hire account executives payable on a commission basis to search for and secure advertisers.

- **Grants** ChannelAustin, at its discretion, may hire grant writers on full-time temporary, part-time temporary, or commission basis.

## UNDERWRITING GUIDELINES

### Everything you need to know about Program Underwriting:

**All entities** contributing to a program/series on public television must be acknowledged. Those who **contribute financially**, by providing funds for the production, are called **program underwriters**. The FCC requires that they be identified in relation to the programs funded.

The purpose of underwriter credits is to identify the entities that have provided funding for the production. Identification is limited to name, location, business purpose. Established corporate slogans may be used to identify the funder.

#### **Program/Underwriter Announcements:**

- Maximum Credit Pod = 60 seconds
- Maximum individual credit = 15 seconds

Underwriters must be identified at the beginning and the conclusion of a program. The underwriting announcements (a/k/a “the pod”) may not be more than 60 seconds in length, made up of individual credits, for each funder, up to 15 seconds long. No single underwriter may receive more than a 15-second credit.

Whenever one underwriter is mentioned all must be acknowledged. Consequently, the underwriting credit pod at the beginning and end of the program will in most cases be the same length.

Underwriters are **not identified in the program production credits**. Underwriters may **not receive a "special thanks" credit**. “Special Thanks,” which are part of the production credits, are reserved for those who provided *in-kind goods and/or services*, not program funding.

Following are the guidelines established by the FCC:

The FCC policy states that noncommercial television shall remain noncommercial and that acknowledgment shall be for identification purposes (i.e., to identify but not promote the program sponsor). The FCC specifically prohibits comparative or qualitative descriptions of products, services or companies. Additionally, company “calls to action” such as “call now,” “shop today,” and “visit our website” are prohibited.

Underwriter pods are to be informative and factual. All underwriters may be identified by their name, logo, address, website and/or phone number (or any variation of these four identification features). Additional information may be provided in audio, video or both as appropriate to help identify each underwriter.

#### **Spot Format**

Underwriting pods are designed to:

- Develop awareness for institutional or product names
- Build good-will and demonstrate good corporate citizenship
- Establish a favorable presence in the community

Underwriting pods may include:

- Your company's name
- Location and contact information, including Web site address
- Up to three or four product lines or services
- Company mascots, identifiable symbols and animated logos
- A recognized spokesperson's voice and instrumental music as background
- Your company's slogan or tagline, so long as it meets FCC guidelines
- Products in or out of their packaging, or consumers or employees instead of products

### **FCC Guidelines**

According to FCC regulation, underwriting pods may **not** include:

- Calls to action ("Come in today and take a test drive")
- Superlative description or qualitative claim about the company, its products, or its services ("The best service in the industry" or "The most intelligent car ever built")
- Direct comparison with other companies, their products or services
- Price or value information ("7.7% interest rate available now" and "affordable," "discount," or "free")
- Inducements to buy, sell, rent, or lease "Six months free service when you buy" or "lifetime guarantee")
- Endorsements ("recommended by 4 out of 5 doctors")
- Demonstrations of consumer satisfaction