

**AGREEMENT BETWEEN THE CITY OF OCEANSIDE
AND
OCEANSIDE COMMUNITY SERVICE TELEVISION CORPORATION**

THIS AGREEMENT ("Agreement") is made this 15th day of February, 2017, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "City", and Oceanside Community Service Television Corporation, a California nonprofit corporation, hereinafter designated as "KOCT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

RECITALS

WHEREAS, the City desires to provide support for the use of cable television through public, educational, and government ("PEG") access channels provided pursuant to federal law;

WHEREAS, the City passed and adopted Ordinance No. 01-OR056-1, codified as Chapter 9A of the Oceanside City Code entitled "Cable Systems, and Open Video Systems," hereinafter the "Ordinance," that sets forth the standards for and regulation of Cable Systems in the City;

WHEREAS, the Ordinance and the Franchise indicate that the City may designate a non-profit access management entity to operate and administer the PEG access facilities, services and programming;

WHEREAS, the Franchise provides that certain channel capacity be provided for PEG access;

WHEREAS, the Franchise provides that certain initial and ongoing payments shall be made by the Franchisee for PEG access capital equipment and facilities;

WHEREAS, the Franchise provides that certain payments and in-kind services shall be provided by the Franchisee to support the operations of the PEG access facilities, equipment and channels;

WHEREAS, on January 1, 2007, the state of California implemented the Digital Infrastructure and Video Competition Act (DIVCA) which reserved to the state the exclusive right to issue franchises for video service providers, and allowed cable providers with local franchises to unilaterally "opt-out" of those franchises at any time prior to the expiration of the franchise if a state video franchisee enters the local market;

WHEREAS, in response to the new requirements of DIVCA, the City enacted

Ordinance # 07-OR0053-1, codified as Chapter 9B of the Oceanside City Code entitled "Regulation of State Video Franchise Holders" that sets forth the standards for and regulation of state franchisees operating in the City;

WHEREAS, at the time the Franchisee "opts out" of the franchise, or at the expiration of the term of the existing franchise, whichever comes first, then all state video franchise holders operating in the City will become subject to the regulation of Chapter 9B, including the funding and PEG support provisions;

WHEREAS, Chapter 9B of the Oceanside City Code states that the City of Oceanside shall receive 5% of the gross revenue of any state video franchise holder operating within the City boundaries and an additional 1% for the purposes of providing PEG programming;

WHEREAS, the mission of KOCT is to serve the community by providing PEG access programming and services;

WHEREAS, for the term of this Agreement, the City has designated KOCT an access management entity to provide the residents and community of the City with PEG access programming and services.

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

SECTION 1. CABLE ACCESS RESPONSIBILITIES.

The City and KOCT agree that the responsibility for the management of PEG access for the City shall be pursuant to the terms of this Agreement, the Enabling Ordinances and the Franchise.

- A. The City designates KOCT as an access management organization responsible for PEG cable television activities for the City.
- B. KOCT is hereby granted access to and use of the public access and educational channels as described in the Enabling Ordinances and the Franchise. KOCT shall be responsible for production and programming promoting and in support of public, educational and government access channels. KOCT shall be responsible for scheduling PEG programming. With respect to programming on the government access channel, such programming is subject to the advice and consent of the City.
- C. The City's representative with respect to this Agreement and the services provided herein shall be the City Manager and his or her designee. Such designation shall be in writing for the purpose set forth therein. The City

and KOCT shall, within thirty (30) days of execution of this agreement, and annually thereafter, establish a schedule of semi-annual meetings for the purpose of establishing preliminary broadcast dates, programming, production schedules, content outlines, and allocation of production responsibilities, including timing issues. The City and KOCT agree to cooperate to insure the timely completion of production responsibilities within the established timeframes. KOCT shall make reasonable efforts to accommodate City requests for services that arise outside the context of the aforementioned procedure.

SECTION 2. REPRESENTATIONS AND WARRANTIES.

KOCT represents and warrants that:

- A. All information, reports and data furnished to the City by KOCT are complete and accurate as of the date furnished to the City, and KOCT shall promptly notify the City in the event of any material change affecting the accuracy or completeness.
- B. All financial statements and information furnished to the City are complete, accurately reflect the financial condition of KOCT on the date shown on the 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 KOCT.
- C. KOCT has notified the City of any and all pending or threatened legal proceedings against KOCT.
- D. KOCT shall undertake all reasonable measures to ensure that the equipment and facilities provided pursuant to this agreement will not be used for commercial purposes.
- E. KOCT has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.
- F. None of the assets of KOCT are subject to any lien or encumbrance of any character except for current taxes, except as shown in the current financial statements furnished by KOCT to the City.

SECTION 3. SCOPE OF SERVICES.

In exchange for the funding provided by the City to KOCT, pursuant to this Agreement, KOCT shall provide the following services:

- A. **OPERATE PUBLIC ACCESS CABLE CHANNEL(S).** Operate the public access cable channel(s) for public/community access programming purposes in a manner which is consistent with the principles set forth in the Enabling Ordinance and the Franchise with the primary purpose being to provide and produce programs for Oceanside's PEG channels and to train and assist students, volunteers and residents in program production to assist in the Mission of KOCT on a nondiscriminatory basis. KOCT shall conduct outreach to insure that the public is aware of the availability of these training services.
- B. **OPERATE GOVERNMENT ACCESS CHANNEL(S).** Operate the government access channel(s) for community access programming purposes in a manner that is consistent with the principles set forth in the Enabling Ordinance and the Franchise with the primary purpose being to administer, coordinate and assist the City in the production of government access programming.
- C. **OPERATE EDUCATIONAL ACCESS CHANNEL(S).** Upon the mutual agreement of KOCT and the City, operate an educational access channel for community access programming purposes in a manner that is consistent with the principles set forth in the Enabling Ordinance and the Franchise, with the primary purpose being to administer, coordinate and interface with local educational institutions regarding programming content on the educational channel.
- D. **PROVIDE EQUAL ACCESS.** Provide access to the use of the facilities, public access channels, and services provided hereunder on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first served non-discriminatory basis, pursuant to operating rules promulgated by KOCT, with review and comment by the City, and consistent with the principles set forth in the Enabling Ordinance and the Franchise.
- E. **DEVELOP OPERATING POLICIES AND PROCEDURES.** Develop policies and procedures for use and operation of the PEG access facilities, and channel(s) and file such policies and procedures with the City. Such policies and procedure shall be subject to the review and comment by the City. The City shall be consulted for input in the creation of such policies and procedures.
- F. **COMPLIANCE WITH LAWS RULES, AND REGULATIONS.** Administer the PEG access channel(s) and facilities in compliance with

federal, state and local laws, rules, regulations, and including compliance with the Enabling Ordinance and the Franchise.

- G. **PLAYBACK/CABLECAST.** Provide for the playback/cablecasting of programs on the PEG access channel(s). KOCT shall use its best efforts to maximize the availability of programming on the government channel and the Public Access channel.
- H. **SPECIAL NEEDS GROUPS.** Support special needs groups, including, but not limited to, the hearing impaired, in program production through training and other means. Accommodations will be made where possible and within the scope of the KOCT budget.
- I. **PROMOTION.** Promote the use and benefit of the PEG access channel(s) and facilities to cable subscribers, the public, and PEG access users.
- J. **PRODUCTION AND PROGRAMMING SERVICES.** Cable television production and programming services to the City shall be provided consistent with the standards set forth in the Enabling Ordinance and the Franchise, and at the discretion of KOCT, except as set forth herein. KOCT recognizes that the City is its primary client and shall have priority with regard to programming schedules. KOCT shall provide the following minimum programming services to the City each year during the term of this Agreement:
 - 1. Complete, live, gavel-to-gavel coverage of each regular meeting of the Oceanside City Council (including joint meetings of the City Council, Community Development Commission and the Harbor Board of Directors) and a minimum of two (2) gavel-to-gavel rebroadcasts within one week of the original broadcast of the meeting. KOCT shall also provide coverage of certain special meetings of the City Council upon request from the City Manager, subject to the availability of sufficient KOCT staff. The City Manager will endeavor to provide thirty (30) days' notice or at least the maximum achievable level of notice to KOCT.
 - 2. Complete coverage of a maximum of four (4) and minimum of two (2) additional "Special Events" as designated by the City. Each program will include four (4) cameras live switched or equivalent full-day production services. The "Special Events" coverage provided under this paragraph shall be requested by the City in connection with the semi-annual meeting process. In the event the City desires to change the "Special Event" programming selection, it may do so upon written notice to KOCT. The City shall endeavor to

provide thirty (30) days' notice of such changes or additions. The City and KOCT agree to use their best efforts to discuss the services provided under this paragraph during the semi-annual meetings described in Section 1, paragraph C. In instances where KOCT has been provided less than thirty (30) day notice, KOCT will endeavor to produce the requested programs subject to the availability of sufficient KOCT resources and staff.

3. Incorporate programming such as, NASA, Annenberg, Democracy Now, and U.S. Department of Education cable programming obtained via satellite, internet and other sources. This shall include a minimum of sixty (60) such programs each year.
4. Bulletin Board access for all City Departments (submitted in a suitable format for posting). Bulletin Board airing (hours and days of programming) will be determined based on the number of departments that participate. Departments can submit one new Bulletin Board page per week.
5. Provide access to KOCT's Bulletin Board and related equipment that will allow City Emergency Operations personnel to override KOCT programming on Channel 19 in order to provide emergency information as needed and per the City's discretion.
6. Produce and cablecast twelve (12) 30-minute "Oceanside Spectrum" programs.
7. Produce and cablecast a minimum of twelve (12) "Oceanside Update" programs. City staff will schedule guests and record in the Council Chambers. KOCT will edit and cablecast "Oceanside Update."
8. Cablecast a maximum of fifty (50) public service announcements for the City of Oceanside to notify the public on public safety, services, projects, and related messages. KOCT will use the following criteria:
 - Five (5) PSAs Evergreen – "A" Package (includes 8 hours of field production, 25 hours post-production, story board, chroma key, video, motion background, animated text, music, voiceover, and three (3) hours of client review and adjustments).
 - Twenty (20) PSAs Time Sensitive – "B" Package (includes 4 hours of field production, 10 hours post-production, video,

motion background, animated text, music, voiceover, and two (2) hours of client review and adjustments).

- Twenty-five (25) PSAs Time Sensitive – “C” Package Package (includes 6 hours post-production, motion still photos, motion background, animated text, music, voiceover, and one (1) hour of client review and adjustments).

9. Produce, under the direction of the City Manager’s office, a minimum of two (2) and a maximum of four (4) Economic Development related public services video promoting the City and/or its services. Videos will be a minimum of eight (8) minutes and maximum of fifteen (15) minutes. The script will be provided by the City with input from KOCT. KOCT shall have approval authority only as it relates to production costs incurred by KOCT.

- Each program will include a maximum of 25 hours of field camera production and 40 hours per program of post-production, graphics, and voice over services.

K. **OTHER ACTIVITIES.** Undertake other PEG access programming activities and services as deemed appropriate by KOCT, with review and comment by the City, and consistent with the obligation to facilitate and promote access programming and provide nondiscriminatory access with regard to public access channel(s).

SECTION 4. CHANNELS OPEN TO PUBLIC.

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

SECTION 5. INDEMNIFICATION.

KOCT shall indemnify, defend, and hold harmless the City, its officials, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly related to, arising or resulting from, any alleged acts or omission of the KOCT, its officers, employees, agents or subcontractors related to, arising out of or resulting from, the operation of KOCT including, but not limited to, programming provided pursuant to the performance of this Agreement. KOCT shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from KOCT's use of channels, funds, equipment, facilities or staff granted under this Agreement.

SECTION 6. COPYRIGHT CLEARANCE.

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

SECTION 7. COPYRIGHT AND OWNERSHIP.

KOCT may copyright, on behalf of the City, documents, materials and/or audio/video productions or items produced by KOCT pursuant this agreement during the term of this agreement. City reserves the right to use, duplicate, and disclose the reports, programs, documents, or other materials in any manner, in whole or in part, for any purpose whatsoever. Further, the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part and to authorize others to do so. Copyright ownership reverts to the City upon termination of

this agreement. Any revenue from such materials shall be used in accordance with the mission and purpose of KOCT as set forth in this Agreement. Such revenue shall be reported to the City as part of the Annual Financial Report.

SECTION 8. DISTRIBUTION RIGHTS.

- A. KOCT shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), and consistent with any pertinent guidelines established in the PEG access operating policies and procedures.
- B. At a minimum, during each hour of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, KOCT shall display a credit stating "Partial funding for the operation of this channel is provided by the City of Oceanside. "Such credit shall also state that the content of programs and the opinions expressed in PEG access programs are the sole responsibility of the program producers.

SECTION 9. EQUIPMENT AND FACILITIES.

- A. KOCT shall be responsible for maintenance and safekeeping of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement. Such equipment shall be maintained in good working order in accordance with industry standards.
- B. KOCT shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the City.
- C. KOCT shall maintain an inventory of all equipment purchased under this Agreement and make best efforts to do so as to all prior agreements. Such inventory shall contain, at a minimum, the following: description of equipment, date of purchase or acquisition, serial number, and inventory control number assigned by KOCT.
- D. KOCT shall keep a record of the status, location, and disposition of all equipment, and shall not dispose of equipment that had a purchase price of \$2000 or more, for any purpose without first notifying the City. Any such

disposal of equipment shall be subject to City approval. KOCT shall report any theft, loss or destruction of equipment to the City.

- E. Upon the termination of this agreement or the dissolution of the KOCT, it shall, subject to the approval of the City, transfer all assets of KOCT representing City-funded equipment and facilities, and/or the proceeds of either to the City, or at the City's option, to such organization or organizations designated by the City to manage access which shall at the time qualify as a tax exempt organization(s) under Section 501(C)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).
- F. The City shall provide Information Technology support for all City issued hardware, software, and network equipment.

SECTION 10. RELOCATION.

KOCT maintains its offices and facilities at 3038 Industry Way, Suite 101, Oceanside, California. Any relocation to another site shall be at the sole cost and expense of KOCT. However, KOCT must maintain all of its offices and facilities within the jurisdictional boundaries of the City of Oceanside. Any relocation outside of the City, without the express approval of the City, via majority vote of the City Council, shall be a material default of this Agreement, subject to immediate termination by the City.

SECTION 11. INSURANCE.

KOCT shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by KOCT and may be included in KOCT's annual budget.

- A. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the KOCT hereby certifies that the KOCT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the KOCT will comply with such provisions and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance with Subsections 11.C through 11.D of this Agreement.
- B. **LIABILITY INSURANCE.**
 - 1. KOCT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of

KOCT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

2. KOCT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

| | |
|--------------------------------------|---------------|
| Combined Single Limit Per Occurrence | \$ 1,000,000 |
| General Aggregate | \$ 2,000,000* |

Commercial General Liability Insurance
(bodily injury and property damage)

| | |
|--------------------------------|--------------|
| General limit per occurrence | \$ 1,000,000 |
| General limit project specific | \$ 2,000,000 |

| | |
|---------------------------------------|--------------|
| <u>Automobile Liability Insurance</u> | \$ 1,000,000 |
|---------------------------------------|--------------|

Crime Insurance

| | |
|---|-------------|
| Crime limit of Insurance per occurrence | \$50,000.00 |
| Money and Securities | |
| Employee Dishonesty | |
| Forgery and Alteration | |

| | |
|--|-------------|
| Erisa Employee Dishonesty per occurrence | \$50,000.00 |
|--|-------------|

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of KOCT under this Agreement.

3. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of fifty per cent (50%) of each of the aggregate limits shall remain available at all times. If over fifty per cent (50%) of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by KOCT to restore the required limits. KOCT shall also notify the City Manager or his/her designee promptly of all losses or claims over Twenty-five Thousand Dollars (\$25,000) resulting from work performed under this contract, or any loss or claim against KOCT resulting from any of KOCT's work.
4. All insurance companies affording coverage to KOCT for the purposes of this Section shall add the City of Oceanside as

“additional insured” under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

5. All insurance companies affording coverage to KOCT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
 6. All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- C. KOCT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement. The City Manager, subject to review by the City Attorney, may revise the insurance requirements herein upon a request by KOCT that includes adequate assurances that the protection is otherwise covered or unnecessary. The City reserves the right to revise the insurance requirements upon sixty (60) days' notice to KOCT upon a finding of good cause. Such finding shall be made by the City Manager with concurrence by the City Attorney.
- D. KOCT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by KOCT to provide such a substitution and extend the policy expiration date shall be considered a default by KOCT and may subject KOCT to a suspension or termination of work under the Agreement.
- E. Maintenance of insurance by KOCT as specified in this Agreement shall in no way be interpreted as relieving KOCT of any responsibility whatsoever and KOCT may carry, at its own expense, such additional insurance as it deems necessary.
- F. **EQUIPMENT INSURANCE.** KOCT shall maintain replacement value casualty and loss insurance on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement

cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire and/or natural catastrophe.

- G. **CABLECASTER'S ERRORS AND OMISSIONS INSURANCE.** During the term of this agreement and for a minimum of four (4) years thereafter, KOCT insurance shall be maintained in the minimum amount of Five Hundred Thousand Dollars (\$500,000) to cover the content of productions which are cablecast on the access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers, but shall name the City and Franchisee as additional insureds. The City, by and through the City Manager, upon request of KOCT, and upon presentation by KOCT of adequate assurances with respect to the matters referenced in this paragraph, may, at its sole discretion, waive the requirement for Cablecaster's Errors and Omissions Insurance.

SECTION 12. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

KOCT shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental disability in compliance with all federal, state, and local laws and statutes.

SECTION 13. INDEPENDENT CONTRACTOR.

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

SECTION 14. ASSIGNMENT AND DELEGATION.

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of KOCT's duties be delegated, without the express written consent of the City. Any attempt to assign or delegate this Agreement without the express written consent of the City shall be void and of no force and effect. This section does not preclude KOCT from subcontracting with others for the provision of services. However, KOCT shall retain responsibility for, and remain responsible for the provision of all services

contemplated by this Agreement. Consent to one assignment by the City shall not be deemed to be consent to a subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

SECTION 15. REPORTS.

On or before October 15th of each year, KOCT shall submit to the City an annual report for the preceding fiscal year (July 1 – June 30). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and services provided in a format approved by the City;
- B. Current and complete listing of KOCT's Officers and Board of Directors;
- C. Year-end financial statements audited by an independent Certified Public Accountant prepared according to generally accepted accounting principles (Will be due on or before December 31st of each year); and
- D. Single audit conducted by an independent CPA prepared according to generally accepted accounting principles pursuant to City Council Policy 200-09.
- E. Notification of change in corporate status, including state and federal non-profit status (I.R.C. Sec. 501(c)(3)).
- F. KOCT shall submit a report of its activities and expenditures in a format acceptable to the City. Reports will be completed on a quarterly basis pursuant to Council Policy 200-09.

SECTION 16. RECORDS.

- A. KOCT shall maintain all necessary books and records, in accordance with generally accepted accounting principles. Additionally, KOCT shall retain financial records for a minimum period of five (5) years. KOCT shall retain records of programming and services provided pursuant to this Agreement including, but not limited to, production costs, names and addresses of participants and citizens receiving training, complaints and/or comments received, etc. for a period of two (2) years.
- B. Upon forty-eight (48) hours advance request from City, KOCT shall, at any time during normal business hours, make available all of its records with

respect to all matters covered by this Agreement, including, but not limited to, financial reports, records of public access use, and corporate documents.

SECTION 17. FUNDING AND OTHER RESOURCES.

The City agrees to make the following funds and resources available to KOCT during the term of the Agreement:

- A. Franchisee has dedicated certain channel capacity (spectrum on the cable system) for PEG access use. The City agrees to permit KOCT to manage that channel capacity for PEG access programming purposes.
- B. Funding from Franchisee for PEG Access Services, Facilities and Equipment.
 - 1. In accordance with the Franchise and current state and federal law, Franchisee is required to pay to the City franchise fees in the amount of five (5) percent of gross revenues derived from its cable operations in the City. The Franchise Fee funds are placed in the City's General Fund accounts for the purpose of funding City services, including services provided pursuant to this Agreement. State Video Franchise Holders are likewise required to provide five (5) percent of gross revenues pursuant to the provisions of DIVCA.
- C. Funding provided by the City to KOCT for PEG Access Services, Facilities and Equipment.
 - 1. **Pass Thru Funds.**
Pursuant to Section 9B.1.1 of the Oceanside City Ordinance, Franchisee has agreed to collect and pay to the City fee equal to one (1) percent of gross revenue of that State video franchise holder (the "pass-thru"), for ongoing PEG capital equipment and facilities support consistent with the provisions of Section 622(g)(2)(C) of the Cable Act. Pursuant to DIVCA, any state video franchise holders providing video services within the City will be required to meet the same pass-thru obligation. The City shall retain 7% of the pass-thru each quarter, not to exceed \$50,000 annually for the maintenance and replacement of equipment in the City Council Chambers. The remaining pass-thru shall be distributed to KOCT on a quarterly basis, in accordance with the distribution policy and timeline set forth in Section 24. The actual amount of funding under this section shall vary based upon the gross revenue of cable operations during any given quarter.

SECTION 18. SEMI-ANNUAL MEETING AND BUDGET.

- A. On or before June 30th of each year in which this Agreement is in effect, KOCT shall provide to the City an Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds and channel(s) received from the City. Such plan shall contain:
 - 1. A statement of anticipated number of hours of local original PEG access programming;
 - 2. Other access activities planned by KOCT; and
 - 3. A detailed (line item) operating budget following the procedures outlined in City Council Policy 200-09, including the attached Regulatory Forms.
 - 4. Fundraising plan as set forth in Section 20 of the Agreement.
- B. The City and KOCT may arrange meetings, as necessary, to discuss the Annual Plan and budget for the upcoming year, and the execution of the previous year's plan. These meetings shall be in addition to the semi-annual meetings, and shall not function as a substitute for the aforementioned reports.
- C. KOCT shall submit, as part of its Annual Workplan, a schedule of programming to be provided consistent with the goals established herein, as well as those goals established during the semi-annual and annual programming meetings with the City.

SECTION 19. EXPENDITURE OF FUNDS.

KOCT shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and Section 3 (Scope of Services) of this Agreement. Funds not expended in the year covered by the Annual Budget and Activities Plan may be carried over by KOCT into succeeding years, subject to City review and comment to the budget allocations. Upon termination of this Agreement all funds of any kind received from City and not expended by KOCT shall be returned to City. KOCT shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 20. FUNDING FROM OTHER SOURCES.

KOCT is encouraged to, and may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities and contracts with other public agencies. KOCT shall present its Annual Plan for the upcoming fiscal year for review and comment by the City, to assist with equipment and facility replacement and operational needs. The Annual Plan shall also include annual fundraising and revenue objectives, and targeted activities. The plan shall be updated on an annual basis. The update shall include a report on fundraising activities and results of the prior year. Such funds shall be used in furtherance of the objectives set forth in this Agreement.

SECTION 21. CITY BUSINESS LICENSE.

Prior to the commencement of any work under this Agreement, KOCT shall obtain and present a copy of an Oceanside City Business License to the City Manager.

SECTION 22. CONFLICT OF INTEREST.

The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and KOCT further agrees not to hire or contract for services any employee or officer of the City that would be in violation of any federal, state or local law or regulation. KOCT shall not offer gratuities in the form of entertainment, gifts, or otherwise give to any agent, representative, employee or City official with a view toward securing favorable treatment with respect to the performance of this Agreement.

SECTION 23. MEDIATION

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be equally borne by the parties.

SECTION 24. FUND DISBURSEMENT POLICY AND PROCEDURE.

The funds provided pursuant to the terms of this Agreement shall be disbursed in accordance with the procedure set forth herein, or as may be amended from time to time by the City consistent with Council Policy 200-09. Additionally, funds received pursuant to this agreement shall be maintained in a separate account(s) and shall not be commingled with other funds. Funds received by KOCT from the City shall be deposited in a federally insured bank or savings institution, e.g., FDIC. Disbursements over Two Hundred Fifty Dollars (\$250) from said accounts shall require not less than two (2) authorized signatures.

A. Pass-Thru

Upon the approval of this Agreement and execution by the City, and receipt of a properly completed and executed AFE from KOCT, the City shall, as soon as reasonably possible, disburse to KOCT pass-thru amounts collected from the Franchisee. Each quarter thereafter, KOCT shall submit to the City a properly completed AFE for payment of the amount collected from the Franchisee during the previous quarter. Such amounts shall be paid by the City within thirty (30) days of receipt and approval of the AFE. All expenditures shall be in accordance with the guidelines and requirements set forth in this Agreement and the Franchise, including City Council Policy 200-09 regarding non-profit financial reporting.

SECTION 25. REOPENER.

This Agreement shall be subject to re-opener by the City as set forth herein.

- A. At the end of five (5) years from the execution of this agreement.
- B. This Agreement shall also be subject to a re-opener based upon changes in federal or state law, impacting the City's continued ability to provide the funds set forth in this Agreement.
- C. The City Manager shall have the non-delegable authority, on behalf of the City, to re-open this Agreement for the purposes set forth in this Section 25, and to effectuate any funding reductions or changes required in accordance with the terms of this Agreement.

SECTION 26. MANAGEMENT CHANGES.

KOCT shall notify the City of any change in its Board of Directors at its semi-annual meetings and of any change of KOCT's Executive Director, KOCT shall notify City within ten (10) working days of its occurrence. KOCT will notify City of any change in KOCT's corporate structure within ten (10) working days of its occurrence.

SECTION 27. NOTIFICATION OF ACTIONS 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 KOCT, or brought by KOCT, KOCT shall deliver copies to the City within fifteen (15) days of receipt or filing, whichever is applicable.

SECTION 28. NO THIRD PARTY BENEFICIARIES.

This Agreement does not confer any enforceable rights to any person or entity that is not a party to this Agreement.

SECTION 29. 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 reserved. No waiver by the City of any one or more of KOCT'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 Agreement.

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

SECTION 30. VENUE.

The obligations and undertakings of each of the parties to this Agreement shall be performed in Oceanside, California. The venue for any court action shall be the Superior Court of California, San Diego County, North County Division.

SECTION 31. TERM OF AGREEMENT.

This Agreement shall be for a period of approximately five (5) years, with an option for an additional five (5) years, commencing on July 1, 2017, and ending on June 30, 2022, unless terminated earlier, as provided in this Agreement. This Agreement may be subject to annual performance reviews, and may be subject to earlier termination, as set forth elsewhere herein.

SECTION 32. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. The City shall have the right upon one hundred twenty (120) days written notice to KOCT to terminate this Agreement for:
 - 1. Breach of any material provision of this Agreement by KOCT;

2. Malfeasance, misfeasance, misappropriation of funds; or
 3. Loss of 501(c)(3) status by KOCT.
- B. KOCT may avoid termination by curing any such breach to the satisfaction of the City within thirty (30) days of notification or within a time frame agreed to by the City and KOCT. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.
- C. In addition to the foregoing, the City may terminate this agreement upon ninety (90) days written notice to KOCT upon termination of any of the funding sources set forth in this agreement, including, but not limited to, the City's ability to collect franchise fees pursuant to federal, state, or local law.
- D. Upon termination of this Agreement, KOCT shall immediately transfer to the City, or a City designated non-profit organization with I.R.C. 501(c)(3) all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by KOCT with funds received pursuant to this Agreement.

SECTION 33. EXTENSION OF AGREEMENT.

This Agreement may not be renewed or extended beyond the original term, except that extensions may be granted at the option of the City as necessary to coincide with the Franchise renewal process.

SECTION 34. TIME.

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

SECTION 35. COOPERATION.

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

SECTION 36. APPLICABLE LAW.

This Agreement shall be interpreted and enforced under the laws of the State of California.

SECTION 37. NOTICES.

All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:

City of Oceanside
City Manager
300 North Coast Highway
Oceanside, CA 92054

TO KOCT:

KOCT
Executive Director
3038 Industry Way, Suite 101
Oceanside, CA 92054

(with a copy to the City Attorney)

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

SECTION 38. INTERPRETATION OF THE AGREEMENT.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City or KOCT.

KOCT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

SECTION 39. ENTIRE AGREEMENT.

This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended

only by written agreement signed by the parties, and no purported oral amendment to this Agreement shall be valid.

SECTION 40. SIGNATURES.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the KOCT and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures:

OCEANSIDE COMMUNITY SERVICE
TELEVISION CORP.

By: _____

MARGRET MERLOCK
Chairman of the Board of Directors

CITY OF OCEANSIDE

By: _____

MICHELLE SKAGGS LAWRENCE
City Manager

APPROVED AS TO FORM:

33-0088959

Employer ID No.

City Attorney

NOTARY ACKNOWLEDGMENTS OF KOCT MUST BE ATTACHED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On Feb 2 2017 before me, Glenda Garrison Notary
(insert name and title of the officer)

personally appeared Margaret Merlock
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Glenda Garrison



(Notary Seal)

*****OPTIONAL INFORMATION*****

The information below this line is not required by law

Title of Document Agreement between City of Oceanside + Oceanside Community Service Television Corp.

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