

**CONTRACT NAME: PUBLIC AND EDUCATIONAL ACCESS TO CABLE TELEVISION
SUPPORT AGREEMENT BETWEEN THE CITY OF DAVIS, DAVIS MEDIA ACCESS AND
THE DAVIS JOINT UNIFIED SCHOOL DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: This Agreement provides for the broadcast of the DJUSD board meetings held in the Community Chambers.

FISCAL IMPACT: There is no financial impact to the district.

PUBLIC AND EDUCATIONAL ACCESS TO CABLE TELEVISION SUPPORT
AGREEMENT (EXHIBIT A)

This Agreement is entered into by the City of Davis, a California municipal corporation (“City”); Davis Media Access, a California nonprofit corporation (“DMA”); and Davis Joint Unified School District (DJUSD), collectively the “Parties” in this agreement.

RECITALS

- A. Under the Digital Infrastructure and Video Competition Act (DIVCA), the City receives franchise payments for use of City infrastructure for cable television, which it uses in part to support community access to cable television and community media.
- B. The City has, in prior years, entered into agreements with DMA and DJUSD for DMA and DJUSD to serve as the cable television public access service and educational access service providers to the residents of City.
- C. The Parties desire to enter into a contractual arrangement to provide for development of greater public and educational access, as well as continued government access, to cable television and other media in Davis. The Parties, individually and collectively, determine that the expenditure of services and funds under this Agreement for these purposes is for the public health and welfare of the residents of the City of Davis.
- D. The Parties acknowledge that DMA, with the agreement of DJUSD, will coordinate the educational access.

AGREEMENT

In consideration of the covenants and promises contained herein and in exchange for improved public and educational access to cable television within the City, the Parties agree to the following:

1. **Term.**

This Agreement shall be effective July 1, 2019, and shall continue for a term of three years. This Agreement shall terminate June 30, 2022, unless earlier terminated or extended by the Parties pursuant to the requirements contained herein.

2. **In-kind Contributions from City.**

- a. At a minimum, the City will contribute in-kind services from among the following types of services to DMA and to the District:
 - i. Contribution of at least two of the channels available to the City for public broadcasting from Comcast and AT&T for the purpose of providing public access and educational access programming.
 - ii. Broadcast of District board meetings held in the Community Chambers.
 - iii. Presentation technology within the Community Chambers, as available, when used to record or broadcast events.
 - iv. Staff participation in planning for community media facilities, as developed during the term of the agreement.
 - v. Staff participation in joint planning of community media equipment purchases.
 - vi. Staff participation in joint planning of community media programming services.
 - vii. Share purchase, maintenance, operation and repair of equipment jointly purchased for use by the government, educational and public access channels.
- b. The estimated value of the services provided by City for per year is estimated to be \$25,000, exclusive of joint equipment purchases. If the cost of providing these services exceeds \$25,000 in any year of the agreement, the City will notify DMA and DJUSD, and will meet and confer with DMA and DJUSD to attempt to agree on measures to be taken to minimize expenses to the City; however, the City retains its right to modify and/or reduce its in kind support, consistent to keep the costs to the City at or below \$25,000 per year, for any year that this contract is in place.

- c. By July 1 of each year of the agreement, the City shall submit a list of potential in-kind services which specifies the value of each in-kind service. During each year of the agreement, the City shall maintain records about the amount of in-kind services used by the district and shall report to the district in the event that in-kind services are likely to exceed the total allowed as part of this agreement. DMA and the District will have the opportunity to purchase from the City additional services in excess of the value of those specified in the agreement. By September 30 of each agreement year the City shall report to DMA and the District the total number and value of the in-kind services rendered during the year.

3. Cash Contributions from City.

City shall contribute cash to DMA and DJUSD for each year of this agreement on a quarterly basis. The formula for the allocation of cable resources shall be as follows during the term of this agreement:

- a. The City will collect five percent of the gross cable revenues from Comcast, AT&T and any other cable provider operating in the City as specified in the Digital Infrastructure and Video Competition Act.
- b. The fees will be allocated according to the schedule noted in and approved by Council Resolution dated July 30, 2019 and entitled “Resolution 19-XXX, Authorizing The Davis City Manager To Execute An Agreement Between The City Of Davis, Davis Joint Unified School District, and Davis Media Access for the Provision of Educational and Public Access Cable Services.”
- c. These contributions shall be used by DMA and DJUSD exclusively to provide educational access and public access programming and services. As stated in Resolution 19-XXX, “If the actual revenue received through franchise fees is less than anticipated the City is not obligated to pay the difference to the PEG partners. If the actual revenue received through the franchise is more than anticipated, the City retains the right to determine how money is spent.”

4. **Scope of Services; Budget; Reporting.**

DMA, in coordination with DJUSD, will prepare an annual scope of services and budget outlining the proposed use of these funds for programming of education and public access services. The proposed budget and scope of services will be approved by the designees of both the Parties. By September 30 of each year, the Parties will prepare a report specifying how the funds were expended the previous year (previous July-June) and the progress toward the tasks listed in the scope of services and budget. No funds will be remitted to DMA or DJUSD unless and until the City approves the scope of services and budget.

5. **Consistency with Cable Franchise Agreement.**

DMA and DJUSD agree to the terms and conditions for use of PEG channels, the audit and reporting requirements and use of PEG capital funding described in Resolution 19-XXX. DMA and DJUSD agree that the City has both the responsibility and the right under this agreement to monitor and audit the use of cable-related, capital equipment and funding allocated under this agreement. DMA and DJUSD agree to cooperate fully with any audit by the City, Comcast or AT&T.

6. **Termination.**

In the event City receives no or significantly reduced cable television franchise fees than that shown Resolution 19-XXX; that DMA and DJUSD no longer receive revenues from the City under this agreement; or in the event that state or federal laws or regulations change such that the City effectively receives less net revenue, the Parties shall not be obligated to contribute any amount of cash to each other and this Agreement shall be terminated immediately upon written notice by any of the Parties of such fact to the other parties. In addition, the Parties may mutually and collectively terminate this Agreement in writing at any time with or without cause. Further, any party may terminate this Agreement with or without cause, on ninety (90) days' notice to the other parties.

7. **Indemnity.**

The Parties shall defend, indemnify and hold harmless each other, their officers, employees and agents from any and all loss, expenses, claims, demand or liability whatsoever for

injuries or damages to persons or property arising out of the performance of this Agreement, except for those injuries arising due to the negligence or active malfeasance of any Partner.

8. **Attorneys' Fees.**

If any party to this Agreement commences any legal action against another party to this Agreement which arise out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses and attorneys' fees.

9. **Nondiscrimination.**

No discrimination shall be made in the employment of any person under the agreement on the basis of race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, disability or place of birth.

10. **Agreement Contains All Understandings.**

This document represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral regarding the subjects addressed herein. This document may be amended or its term extended only by written instrument, signed by all the Parties. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

(Signature Page Follows.)

DATE: _____

CITY OF DAVIS,
A California municipal corporation

Mike Webb, City Manager

DATE: _____

APPROVED AS TO FORM:

Inder Khalsa, City Attorney

DATE: _____

DAVIS MEDIA ACCESS,
A California nonprofit corporation

Autumn Labbe-Renault, Executive Director

DATE: _____

DAVIS JOINT UNIFIED SCHOOL
DISTRICT,

John Bowes, Superintendent

STAFF REPORT

DATE: August 13, 2019

TO: City Council

FROM: Kelly Stachowicz, Assistant City Manager
Robert Schulz, Media Services Specialist

SUBJECT: Renewal of Agreement for Public, Education, and Government (PEG) Access Funding for Fiscal Years 2019-2020 through 2021-2022

Recommendations

Approve the attached Resolution (Attachment 1) authorizing the City Manager to enter into a three-year agreement with the City of Davis (City), Davis Media Access (DMA), and Davis Joint Unified School District (DJUSD) through June 30, 2022. The resolution addresses the following contract terms:

- a. Allocation of the annual cable franchise fee revenues for three years.
- b. Allocation of monthly per-subscriber Public, Education, and Government Media (PEG) capital funding (pass-through) between the City and DMA and DJUSD for three years.
- c. Requirements that the agreement with DMA and DJUSD be used strictly for operation and programming of their respective cable channels and related media (bulletin boards systems, webcasting, etc.).

Fiscal Impact

Approval of the first recommendation above will allocate estimated annual Franchise Fee revenues in accordance with previous Council direction, use funding for City Cable Franchise Administration, and provide funds to support Davis Media Access and Davis Joint Unified School District PEG operations for Fiscal Years 19/20, 20/21 and 21/22. The previous three-year agreement concluded at the end of June.

The cable franchise fee revenue from the cable franchise is estimated to be approximately \$550,000 in 2019/2020 and has been left at the same amount for the subsequent two years. PEG Capital and Equipment pass-through revenue is expected to total approximately \$80,000 annually during the same period. The cable industry is very dynamic right now, and changes to the revenue that the City receives are possible. City staff and Davis Media Access are watching the industry, potential legislation, and revenues to try to keep abreast of changes. Because of the uncertainty, the Agreement does not require the City to pay more than the revenues it receives, and the agreement allows for a reopener if federal or state laws or regulations change such that revenues are affected. Staff also recommends reviewing the revenues after the first year to determine if adjustments should be recommended for subsequent years. Davis Media Access is interested in a multi-year agreement to assist with their ability to secure outside financing for capital projects they have planned.

The recommended allocations are below:

FY 19/20 Organization/Function	Amount	
City of Davis Media Services/Information Services	\$225,500	40%
City of Davis Cable Franchise Administration	\$33,000	6%
Davis Media Access – Community Media Center	\$159,500	28.5%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$132,000	23.5%
One-time Supplemental Payment to DMA from Cable Reserves	\$ 9,400	2%
Total	\$559,400	100%
FY 20/21 Organization/Function		
City of Davis Media Services	\$225,500	41%
City of Davis Cable Franchise Administration	\$33,000	6%
Davis Media Access – Community Media Center	\$159,500	29%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$132,000	24%
Total	\$550,000*	100%
FY 21/22 Organization/Function		
City of Davis Media Services	\$225,500	41%
City of Davis Cable Franchise Administration	\$33,000	6%
Davis Media Access – Community Media Center	\$159,500	29%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$132,000	24%
Total	\$550,000*	100%
*City will review total 18/19 and 19/20 revenues to determine 20/21 and 21/22 expected revenues. City may seek reopener with Partners if revenues differ by more than 7% or if laws/regulations related to franchise payments change.		

If the actual franchise fee revenue is less than anticipated the City is not obligated to pay the difference to the PEG partners, and the City will fund its Media Services program first. If the actual franchise fee revenue received is more than anticipated, the remainder will be set aside for expenses or needs as determined by the City.

Approval of the resolution will also allocate estimated annual PEG Capital and Equipment pass-through as follows through Fiscal Year 2021/2022:

<u>FY 19/20, FY 20/21 and FY 21/22</u>		
City of Davis Equipment Replacement	\$12,000	15%
City of Davis Studio	\$13,600	17%
DMA Studio	\$32,000	40%
DMA Equipment Replacement	\$11,200	14%
DJUSD Equipment Replacement	\$11,200	14%
TOTAL est.	\$80,000	

The funding commitments in the Resolution will be met through the anticipated cable franchise fee revenues and through capital and equipment pass-through funding committed through the State-issued franchises with Comcast and AT&T. The City retains the right to terminate the PEG Access Funding Agreement should funding change.

Background and Analysis: Franchise Agreement and PEG Funding

DIVCA (Digital Infrastructure and Video Competition Act of 2006) requires cable TV providers to pay local jurisdictions for the use of their infrastructure via a cable franchise fee and also requires funds be distributed to the local level for the provision of PEG (Public-Education-Government) capital and equipment costs. The City has received franchise fees from Comcast since the 1990s, first through a local franchise agreement and for the past nine months through the state-level DIVCA franchise. The City has received fees from AT&T since December 2009.

The City has historically used these funds to pay for costs associated with the City’s Media Services program (which includes broadcasting and streaming of City Council meetings, Planning Commission meetings, and other public meetings, fulfilling the “Government” portion of PEG requirements. In addition, the City has partnered with Davis Media Access (DMA) and Davis Joint Unified School District (DJUSD) to provide funding that underwrites the Education channel and programming, as well as myriad Davis Media Access programming of general public interest (the Education and Public portions of the PEG requirements). DMA handles all of the broadcasting needs for DJUSD.

Franchise fees received from a cable provider are considered discretionary funds, once the obligations within the city’s franchise agreement with Comcast have been fulfilled; Capital and Equipment revenues are, as the name suggests, only allowed to be expended to make capital and equipment purchases to further PEG programming.

City Council has previously provided direction to utilize the cable franchise fees to fund the city’s Media Services program (Government Access Channel), and to partner with Davis Media Access for the remainder of the Public and Educational Access channels. The renewal of the existing agreement continues to follow this direction, providing a multiple year agreement for the three organizations with more predictable and stable funding, allowing all partners to focus on channel content and sustained programming.

The franchise fee revenue assumptions have been decreased slightly, from \$564,160 in fiscal year 2018-2019 to \$550,000 for the 2019-2020 year to acknowledge fluctuations in the industry. The amount previously allocated for oversight of the I-Net, which is no longer part of the franchise agreement, has been wrapped in the general City portion to offset overall program

costs, and the City's percentage share has increased slightly in both the franchise fees and the capital and equipment allocations. Finally, recognizing that Davis Media Access needs time to secure additional funding sources, staff and DMA agreed to recommend to keep the two partner agencies at the same funding amount for FY 19-20 as they were in FY 18-19. The extra \$9,400.00 will come from cable fund reserves.

The MOU is otherwise fundamentally the same document that has been in place among the three entities for the past decade. It provides the funding formulas and deliverables for each partner, and it protects the City should there be unexpected decreases in revenue or changes to the franchise rules.

In Kind Contributions

The three year agreement will continue to specify in-kind contributions from the City of Davis to DJUSD at an estimated value of \$25,000 for the televising and webcasting of Board of Education meetings.

Attachments

- Attachment 1: Resolution Authorizing a City Manager to Execute an Agreement with Davis Joint Unified School District and Davis Media Access for provision of Public-Education-Government Programming for the Fiscal Years 2019/2020 through 2021/2022
- Attachment 2: Exhibit A (to Resolution): Agreement with DJUSD, City and DMA for PEG Programming

RESOLUTION 19-XXXX SERIES 2019

RESOLUTION AUTHORIZING THE DAVIS CITY MANAGER TO EXECUTE AGREEMENTS BETWEEN THE CITY OF DAVIS, DAVIS JOINT UNIFIED SCHOOL DISTRICT, AND DAVIS MEDIA ACCESS FOR THE PROVISION OF EDUCATIONAL AND PUBLIC ACCESS CABLE SERVICES

WHEREAS, Comcast X, Inc and AT&T each have a state-issued cable franchise agreement in the city of Davis through the State of California Digital Infrastructure and Video Competition Act (DIVCA), which requires franchise payments to local communities; and

WHEREAS, the City receives franchisee fees and other funds it uses in part to support community access to cable television from these two sources; and

WHEREAS, the City has previously entered into agreements with Davis Joint Unified School District (DJUSD), and Davis Media Access (DMA) to serve as the cable television public access service and educational access service providers to the residents of City; and

WHEREAS, the City Council determines that the expenditure of funds and in-kind services under this Agreement for public and educational purposes is for the public health and welfare of the residents of the City of Davis; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council:

1. Authorizes the City Manager or his designee to execute the attached Agreement (Exhibit A) and any other documents related to the provision of public and educational access services with Davis Joint Unified School District and Davis Media Access.
2. Agrees that the term of the agreement will be for three years commencing on July 1, 2019.
3. Agrees to commit funding for the government, educational, and public access cable services as follows from cable franchise fee revenues resulting from the Comcast and the AT&T state video franchise¹:

¹ Cable Franchise Fee revenues are anticipated to average \$550,000 in 2019-2020 through 2021-2022. If the actual revenue received through franchise fees is less than anticipated the City is not obligated to pay the difference to the PEG partners. If the actual revenue received through the franchise is more than anticipated, the City retains the right to determine how funding is spent.

4. Agrees to commit monthly pass-through payments for PEG Capital and Equipment as follows during the life of the contract:

<u>FY 19/20 Organization/Function</u>	Amount	
City of Davis Media Services	\$225,500	40%
City of Davis Cable Franchise Administration	\$ 33,000	6%
Davis Media Access – Community Media Center	\$159,500	28.5%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$132,000	23.5%
One-time Supplemental Payment to DMA from Cable Reserves	\$ 9,400	2%
Total	\$559,400	100%
<u>FY 20/21 Organization/Function</u>	Amount	
City of Davis Media Services	\$225,500	41%
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Total	\$550,000*	100%
<u>FY 21/22 Organization/Function</u>	Amount	
City of Davis Media Services	\$225,500	41%
City of Davis Cable Franchise Administration	\$33,000	6%
Davis Media Access – Community Media Center	\$159,500	29%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$132,000	24%
Total	\$550,000*	100%
<i>*City will review total 18/19 and 19/20 revenues to determine 20/21 and 21/22 expected</i>		

revenues. City may seek reopener with Partners if revenues differ by more than 7% or if laws/regulations related to franchise payments change.

FY 19/20, 20/21, and 21/22 Capital and Equipment		
City of Davis Capital and Equipment	\$12,000	15%
City of Davis Studio	\$13,600	17%
Davis Media Access Studio	\$35,200	44%
Davis Media Access Capital and Equipment	\$9,600	12%
Davis Joint Unified School District Capital and Equipment	\$9,600	12%
TOTAL	\$80,000	

5. Requires approval of annual budgets for the use of the funding and review of accomplishments and an accounting of how funds were used within 90 days of the end of each year of the agreement.
6. Approves in-kind contributions by the City to DJUSD and DMA that strengthen the partnership to enhance community media in Davis.
7. Requires that all parties agree that the use of the revenues and the channels must be in compliance with the cable franchise agreement.

PASSED AND ADOPTED by the City Council for the City of Davis on this 30th day of July, 2019 by the following votes:

AYES:

NOES:

ABSENT:

Brett Lee
Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk