

CONTRACT NAME: AGREEMENT BETWEEN THE CITY OF DAVIS, DAVIS MEDIA ACCESS AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This agreement is between the City of Davis, Davis Media Access and Davis Joint Unified School District to provide for development of greater public and educational access, as well as continued government access, to cable television and other media in Davis.

As in prior years, the City of Davis will serve as the cable television public access service and educational access service provider to the residents of the City and Davis Media Access will coordinate the educational access.

This is a three-year agreement beginning July 1, 2016 and ending June 30, 2019. 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 its cable television franchise agreement with Comcast X, Inc. (“Comcast”), the City receives a franchisee fee and other funds 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, 2016, and shall continue for a term of three years. This Agreement shall terminate June 30, 2019, 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 granted in section 6 of the Cable Franchise Renewal Agreement with Comcast of California 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 \$20,000, exclusive of joint equipment purchases. If the cost of providing these services exceeds \$20,000 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 \$20,000 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 as specified in the Franchise Agreement dated October 1, 2005. The City will collect five percent of the gross cable revenues from AT&T 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 April 5, 2016 and entitled “Resolution 16-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 16-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 Institutional Network, the audit and reporting requirements and use of PEG capital funding described in Resolution 16-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, Institutional Network, capital equipment and funding allocated under this agreement. DMA and DJUSD agree to cooperate fully with any audit by the City or Comcast.

6. Termination.

In the event City receives no or significantly reduced cable television franchise fees than that shown Resolution 16-XXX or in the event that DMA and DJUSD no longer receive revenues from the City under this agreement, 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

Dirk Brazil, City Manager

DATE: _____

APPROVED AS TO FORM:

Harriet Steiner, City Attorney

DATE: _____

DAVIS MEDIA ACCESS,
A California nonprofit corporation

Autumn Labbe-Renault, Executive Director

DATE: _____

DAVIS JOINT UNIFIED SCHOOL
DISTRICT,

John Bowes, Superintendent

RESOLUTION 16-XXXX SERIES 2016

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, the City of Davis has a cable television local franchise agreement with Comcast X, Inc. ("Comcast"), valid through September 30, 2018, which will then move to a state issued franchise, and AT&T has a state issued video franchise; 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, 2016.
3. Agrees to commit funding for the government, educational, and public access cable services as follows from cable franchise fee revenues resulting from the contract with Comcast and the AT&T state video franchise¹:

¹ Cable Franchise Fee revenues are anticipated to average \$560,000 in 2016-2017 through 2018-2019. 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 16/17 Organization/Function</u>	<u>Amount</u>	
City of Davis Media Services	\$204,405	36.5%
City of Davis Cable Franchise Administration	\$32,976	6%
City of Davis Institutional Network Coordination	\$23,266	4%
Davis Media Access – Community Media Center	\$166,260	29.5%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$134,640	24%
<u>Total</u>	\$561,547	100%
<u>FY 17/18 Organization/Function</u>	<u>Amount</u>	
City of Davis Media Services	\$205,427	36.5%
City of Davis Cable Franchise Administration	\$33,140	6%
City of Davis Institutional Network Coordination	\$23,383	4%
Davis Media Access – Community Media Center	\$166,260	29.5%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$134,640	24%
<u>Total</u>	\$562,850	100%
<u>FY 18/19 Organization/Function</u>	<u>Amount</u>	
City of Davis Media Services	\$206,454	36.5%
City of Davis Cable Franchise Administration	\$33,306	6%
City of Davis Institutional Network Coordination	\$23,499	4%
Davis Media Access – Community Media Center	\$166,260	29.5%
Davis Unified School District – Educational Access Channel - (Educational programming, training and resource management)	\$134,640	24%
<u>Total</u>	\$564,160	100%

FY 16/17, 17/18 and 18/19 Capital and Equipment		
City of Davis Capital and Equipment	\$13,125	14%
City of Davis Studio	\$13,125	14%
Davis Media Access Studio	\$40,000	43%
Davis Media Access Capital and Equipment	\$13,125	14%
Davis Joint Unified School District Capital and Equipment	\$13,125	14%
TOTAL	\$92,500	

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 5th day of April, 2016 by the following votes:

AYES:

NOES:

ABSENT:

Daniel M. Wolk
Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk