

**AGREEMENT BETWEEN THE CITY OF SANTA ROSA  
AND THE SONOMA COUNTY LIBRARY**

**AGREEMENT NUMBER \_\_\_\_\_**

This "Agreement" is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Santa Rosa, a municipal corporation ("City"), and Sonoma County Library, a Joint Powers Authority ("Library").

**RECITALS**

- A. The City participates in a Joint Powers Agreement ("JPA") for the County-wide provision of library services by Library. The JPA members include:
1. City of Cloverdale
  2. City of Cotati
  3. City of Petaluma
  4. City of Rohnert Park
  5. City of Santa Rosa
  6. City of Sebastopol
  7. City of Sonoma
  8. Town of Windsor
  9. County of Sonoma
- B. On August 26, 2008, City enacted title 3 Chapter 3-50 of the Santa Rosa City Code entitled "DIVCA Ordinance" for the purpose of implementing relevant provisions of the Digital Infrastructure Video Competition Act ("DIVCA") and the rules of the California Public Utilities Commission promulgated thereunder.
- C. AT&T, Comcast, and Sonic.net ("Companies") each hold State franchises to provide video services in the City of Santa Rosa ("DIVCA Franchisees") pursuant to DIVCA.
- D. Under DIVCA, the DIVCA Franchisees must provide public, educational, and government ("PEG") access channels and City may establish a fee to support PEG channel facilities consistent with federal law. City has established a PEG support fee of 1% of gross revenues, payable to City. Under federal law, PEG fees may be used for capital expenses associated with the construction of PEG access facilities, which may include equipment, but not training, staff time or other operations costs. (*Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008)).
- E. In February of 2017 the City entered into an agreement with Library under which City would assist in the creation of new video public access facilities in library branches within the territorial limits of the City of Santa Rosa through the provision of PEG fees to Library. The Library desired to create, operate and manage PEG access facilities to:
1. Provide easy public access to current-generation technology used in video creation;
  2. Generate an environment conducive to video and media-based public education;
  3. Create areas where the public can get hands-on experience with video editing and distribution; and
  4. Provide public access for video producers interested in creating content to be shown on City of Santa Rosa PEG broadcast channels.
- F. After a successful three years, the City desires to extend the Agreement for an additional

three years.

**NOW, THEREFORE, City and Library agree as follows:**

**Section 1: Equipment and Facilities**

1. Library shall use funding provided by City to assist in the creation of PEG access facility areas that:
  - a. Are located on Sonoma County Library premises;
  - b. Are open to the public during regular Library hours;
  - c. Provide easy public access to current-generation technology used in video creation;
  - d. Generate an environment conducive to video and media-based public education;
  - e. Create areas where the public can get hands-on experience with video editing and distribution; and
  - f. Provide public access for video producers interested in creating content to be shown on City of Santa Rosa PEG broadcast channels.
2. Library shall provide all management and operational resources.

**Section 2: Funding from City**

1. Annually, Library shall submit to City a detailed proposal of capital equipment requirements of the Facilities for the upcoming year for City's review and consideration. At City's sole discretion, PEG support fee funding will be provided to Library up to a maximum amount of \$150,000 per fiscal year (July 1<sup>st</sup> through June 30<sup>th</sup>) for the purchase of capital equipment by Library, provided that such purchases have been approved by the City Manager or the City Manager's designee in writing in advance.
2. While expected to be stable, the funding level is subject to changes in federal or state law and/or other circumstances that may impact the level of PEG capital funds provided by City to Library.
3. City funding is based on proposed estimated capital expenses. Library shall provide receipts of actual capital purchases to the City representative within three (3) months of purchase.
4. Any funding not used by Library within two (2) years, shall be returned to the City.
5. Library shall use City funding for PEG capital expenses only, in accordance with generally accepting accounting practices and applicable state and federal law and regulations.
6. Library shall use City funding providing under this Agreement for libraries located within City territorial limits only. Nothing in this Agreement precludes similar agreements with other local agencies.
7. Library shall own all equipment and facilities acquired by it and purchased with City funding received under this Agreement.

**Section 3: Accounting; Expenditure of Funds**

Upon expiration or termination of this Agreement, all funds of any kind received from City and not

expended by Library shall be promptly returned to City. Library shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City. Notwithstanding any notice requirements in Section 5 below, the unlawful use of funds shall be cause for the immediate termination of this Agreement by City.

#### **Section 4: Term of Agreement**

This Agreement shall be effective February 1, 2022, and shall terminate five (5) years from effective date, unless sooner terminated as provided herein.

#### **Section 5: Termination of Agreement**

City shall have the right to terminate this Agreement upon ninety (90) days written notice to Library for: (1) breach of any provision of this Agreement by Library, provided, Library may avoid termination by curing any such breach within sixty (60) days of notification or within a time frame agreed to by City and Library; or (2) malfeasance, misfeasance, misappropriation of funds; or (3) termination of the JPA.

#### **Section 6: Severability**

If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

#### **Section 7: Cooperation**

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

#### **Section 8: Applicable Law**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

#### **Section 9: Notices**

All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To Library:  
Ann Hammond, Director  
211 E Street  
Santa Rosa, CA 95404

To City:  
Eric McHenry, Chief Information Officer  
90 Santa Rosa Avenue, 2<sup>nd</sup> Floor  
Santa Rosa, CA 95404

Any party may change its address for notice by written notice to the other party at any time.

**Section 10: 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 both parties. No purported oral amendment to this Agreement shall be valid.

EXECUTED to be effective as of the date shown above.

**SONOMA COUNTY LIBRARY:**

**CITY OF SANTA ROSA**  
a Municipal Corporation

*Signatures of Authorized Persons:*

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk