

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

AGREEMENT NUMBER _____

This "Agreement" is made this _____ day of _____, 2017, by and between the City of Santa Rosa, a municipal corporation ("City"), and Sonoma County Library, a Joint Powers Authority ("Library").

RECITALS

- A. 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 "State Video Service Franchises" ("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. City desires to enter into an agreement with Library under which City will 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.

- F. Library desires to create, operate and manage PEG access facilities ("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.
 - 4. Provide public access for video producers.

NOW, THEREFORE, City and Library agree as follows:

Section 1. Creation, Operation and Management of Facilities

- A. Library shall use funding provided by City to create Facilities that:
 - 1. Are located in Sonoma County Library branches.
 - 2. Are open to the public during regular library hours.
 - 3. Provide easy public access to current-generation technology used in video creation.
 - 4. Generate an environment conducive to video and media-based public education.
 - 5. Create areas where the public can get hands-on experience with video creation and editing.
- B. Library shall manage and operate all Facilities during the term of this Agreement. Library shall:
 - 1. Provide access to equipment, facilities, and services provided hereunder to the public on a first-come, first-served non-discriminatory basis, pursuant to operating rules promulgated by Library;
 - 2. Maintain policies and guidelines for use and operation of the Facilities, and make modifications as necessary; and
 - 3. Manage the Facilities in compliance with applicable laws, rules, and regulations.
- C. Library shall open and continuously operate at least two (2) video access Facilities no later than February 1, 2018.

Section 2. Funding from City

- A. Annually, Library shall submit to City a detailed proposal of capital equipment requirements of the Facilities for the upcoming fiscal 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 1st through June 30th) 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.
- B. 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.
- C. 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.
- D. Any funding not used by Library within two (2) years, shall be returned to the City.
- E. At its own cost and expense, Library shall keep in good condition, and maintain and repair all equipment and facilities owned, leased, or purchased with funds provided by City pursuant to this Agreement.
- F. 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.
- G. Library shall own all equipment and facilities acquired by it and purchased with City funding received under this Agreement; provided, however, that if this Agreement terminates prior to the end of the term for any reasons whatsoever, all equipment purchased by Library with City funds shall be returned to City or at City option, to such organization or organizations designated by the City.

- H. Upon the expiration or termination of this Agreement, Library shall promptly return to City all funds of any kind received from City under this Agreement and not expended by Library.

Section 3. Accounting; Expenditure of Funds

- A. Library shall spend funds received from City solely for capital expenses as permitted by law. In no event shall Library use such funds for the costs of operations, including staff time. Funds not expended in any fiscal year may be carried over into succeeding years. Library shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City. Library shall provide to City an annual accounting of all expended funds during the previous fiscal year in accordance with generally accepted account principles. The unlawful use of funds, as determined by City in its sole discretion, shall be cause for City to deduct such funds from any payments owed to Library.
- B. Notwithstanding the notice and cure provisions in Section 11 below, the unlawful use of funds, as determined by City in its sole discretion, shall be cause for the immediate termination of this Agreement by City.

Section 4. Records; Fiscal Audit

- A. Library shall maintain all necessary books and records in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, Library shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.
- C. Library shall maintain all records related to this Agreement for a period of not less than three years following the expiration or earlier termination of this Agreement.

Section 5. Indemnification

Library shall indemnify, defend, and hold harmless City, its officers, agents, 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 arising or resulting from any alleged act or omission of Library, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement or 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 or other injury or damage in law or at equity which claims, directly or indirectly, result from Library use of funds, equipment, or performance under this Agreement. The provisions of this Section 5 shall survive any expiration or termination of this Agreement.

Section 6. Insurance

Library shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section 6. The cost of such insurance shall be born by Library.

- A. Liability and Property Damage Insurance. Commercial General liability and property damage insurance, including contractual liability coverage, of no less than \$1 million per occurrence on the account of bodily or personal injuries, including death, or on account of property damage, arising from, or caused, directly or indirectly, from the performance of this Agreement. This insurance shall be a per occurrence policy. The City, its officers, agents, volunteers and employees shall be named as additional insureds by endorsement to the liability policy. For any claims related to this

Agreement, Library's insurance shall be primary and the policies shall contain by endorsement a cross liability clause. Any insurance or self-insurance maintained by the City shall be in excess of the Library's insurance and shall not contribute with it.

- B. Property and/or Equipment Insurance. Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement, for replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire and natural catastrophe. City shall be named as Loss Payee as its interests may appear on such policies.
- C. Workers' Compensation Insurance. Workers' compensation insurance as required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$1 million per accident for bodily injury or disease. Library hereby grants to City a waiver of any right to subrogation which any insurer may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not Library has received a waiver of subrogation endorsement from the insurer.
- D. Verification of Coverage. Library shall furnish City with original certificates and endorsements effecting coverage required above. The certificates shall state that the insurance evidenced thereby may not be terminated without 30 days' prior written notice thereof being received by City. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before the City executes this Agreement and must be in effect for the duration of this Agreement. City reserves the right to require complete copies of all required policies and endorsements.
- E. Modification. The City reserves the right to modify these insurance requirements at any time, including amounts, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Section 7. Non-Discrimination; Compliance with Laws

- A. Non-Discrimination. Library shall not discriminate against any person on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.
- B. Compliance with Laws. Library shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA.

Section 8. Independent Contractor

- A. It is understood and agreed that Library (including Library's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Library nor Library's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Library under the provisions of this Agreement. As an independent contractor, Library hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Library's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.
- B. If, in the performance of this Agreement, any third persons are employed by Library, such persons

shall be entirely and exclusively under the direction, supervision, and control of Library. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Library. It is further understood and agreed that Library shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Library's assigned personnel and subcontractors.

C. The provisions of this Section 8 shall survive the expiration or termination of this Agreement.

Section 9. Assignment and Subletting

Neither this Agreement nor any interest herein shall be assigned or transferred by Library, except as expressly authorized in writing by City.

Section 10. Term of Agreement

This Agreement shall be effective on February 1, 2017 and shall terminate five (5) years from effective date, unless sooner terminated as provided herein.

Section 11. 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) termination of the JPA.

Section 12. 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 13. Cooperation

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

Section 14. 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 15. 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:
Brett Lear, Director Sonoma County Library
211 E Street
Santa Rosa, CA 95404

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

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

Section 16. 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
a Joint Powers Authority

CITY OF SANTA ROSA
a Municipal Corporation

Signatures of Authorized Persons:

By: _____

By: _____

Print
Name: _____

Print Name: _____

Title: MAYOR

Title: _____

By: _____

APPROVED AS TO FORM:

Print Name: _____

Office of the City Attorney

Title: _____

ATTEST:

City Clerk