

TERMINATION OF MEDIA SERVICES AGREEMENT WITH SANTA ROSA COMMUNITY MEDIA ACCESS CENTER, INC. (DBA CMEDIA)

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Termination of Media Services Agreement with CMedia

Summary

- On October 31st, 2016, CMedia notified City staff of a complete layoff of all its staff, including its Executive Director, stating financial and internal control issues, prompting a City audit of their operations and financial management.
- As a result of the audit, it has been found that Public Education and Government (“PEG”) funds have not been used within its intended purpose.
- The basis for termination of this agreement is Section 15 of the Agreement, which provides that the unlawful use of funds shall be cause for the immediate termination of the Agreement.

Franchise and Funding Background

Franchise Authority

- Digital Infrastructure and Video Competition Act of 2006
- Administered by California Public Utilities Commission

Franchise Fees

- Unrestricted use (General Fund)
- Suitable for “Operational” use

PEG Fees

- The federal Cable Communications Policy Act of 1984 (Cable Act), 47 U.S.C. § 542, restricts the use of PEG fees to capital expenses associated with PEG access facilities.

Agreement and Auditing

Use of PEG fees (RECITALS, Section D)

Under DIVCA, the DIVCA Franchisees must provide public, educational and governmental (“PEG”) access channels and the City may establish a fee to support PEG channel facilities consistent with federal law. The City has established a PEG support fee of 1% of gross revenues, payable to the 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.

CMedia Reporting Obligations / Fiscal Audit (Section 12)

- Annual report plus year-end financial statement and audit performed by an independent certified public accountant.
- Reviewed by City staff, but with focus on service delivery, quality and operations. Capital expenditures were not compared to approved projects list.

Termination of Media Services Agreement with CMedia

January 2014

- Three-year agreement signed between parties.
- Public Education and Government (PEG) services.
 - Recording and playback of City public meetings
 - Operation of a Media Center
 - Programming of (4) PEG broadcast channels
- Operational Funding (Franchise Fees / General Fund)
 - First Year of Agreement: \$360,000
 - Second Year of Agreement: \$275,000
 - Subsequent Years through the Term of Agreement: \$200,000
- Capital Project Funding (PEG Fees / constrained to capital)
 - Maximum of \$150,000/year
 - Requires prior approval by City of project estimates.

Termination of Media Services Agreement with CMedia

October 2016

- Annual audit performed by CMedia's auditor reviewed by CMedia board.
- Executive Director and Assistant Director immediately laid off / fired by CMedia board.
- City notified of potential “borrowing” of PEG capital funds during prior Quarter to pay operational costs.
- All CMedia staff laid off due to financial considerations.
- Volunteer (ex-CMedia employees) picked up public meeting broadcast and Media Center services.

Based on City concerns, internal City audit group brought in to assess CMedia financials. Full cooperation by CMedia.

Termination of Media Services Agreement with CMedia

Internal City Performance Audit objectives:

- Determine whether CMedia complied with the accounting, reporting and usage of PEG capital funds
- Evaluate CMedia's ability to sustain its operations through March 31, 2017
- Determine CMedia's current payroll liability and its ability to pay its employees
- Determine the amount of PEG funds advanced to CMedia.

Termination of Media Services Agreement with CMedia

Internal City Performance Audit Results:

- CMedia incorrectly used and/or accounted for \$329,140.30 in PEG capital funds received from the City, and did not properly account for the PEG capital assets due to the City.
- CMedia does not have any reliable sources of revenue that will enable it to sustain its operations through March 31, 2017 while providing the level and quality of services acceptable to the City.
 - Per available records, as of October 31, 2016 CMedia's total cash in various bank accounts is \$32,093.93 and its current liabilities total is \$51,898.11, including an estimated payroll liability of \$10,000.

Termination of Media Services Agreement with CMedia

Internal City Performance Audit Results (cont):

- In addition, approximately \$10,000 in credit card purchases were identified that appear to be personal expenses that are not in line with CMedia's tax-exempt purpose.
 - CMedia board chair notified of all findings.

Emergency Actions Taken by City

- Four part-time, temporary ex-CMedia employees hired into the Information Technology Department to ensure continued, reliable public meeting broadcast.
 - Approximately 20 total hours per week.
 - Also will provide temporary support for Library Commission and Santa Rosa School Board meetings until longer-term plan in place.

Termination of Media Services Agreement with CMedia

CMedia Capital Project Requests

- 2014: \$149,900
- 2015: \$149,935
- 2016 (to date): \$75,000
- **TOTAL: \$374,835**

CMedia Capital Project Expenses (2014-2016)

(From CMedia internal general ledger)

- Capital Equipment: \$45,694.70 (12% of total)
- Labor / Un-Accounted : \$329,140.30 (88% of total)

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City Staff Recommendation

- City staff recommends termination of the Agreement based on Section 15, which provides that the unlawful use of funds shall be cause for the immediate termination of the Agreement.
- Upon termination, CMedia will be required to vacate the Media Access Center facility and return all City-owned equipment. The Media Access Center will remain closed until further notice.

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Next Steps

- Part-time, temporary staff hired by the Information Technology Department are providing short-term public meeting support and playback.
- Accelerated discussions are in progress with Sonoma County Library re: providing public access and education services at Santa Rosa-based library branches.
- Future funding needs, and the PEG services delivery model will be considered at a future council meeting.