2:00pm #3E
6/24/10

CITY OF FRESNO
City Clerk's Office (Original)

SERVICES AGREEMENT
CITY OF FRESNO, CALIFORNIA

THIS AGREEMENT is made and entered into effective the 20th day of July, 2010, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Community Media Access Collaborative, a California non-profit public benefit corporation (hereinafter referred to as "CMAC").

RECITALS

WHEREAS, the Fresno/Clovis Community Media Authority, a joint powers agency created by the Cities of Fresno and Clovis to act as their jointly designated Public, Education and Government Access ("PEG Access") provider, has designated CMAC as the access management organization to manage and administer the PEG Access channels, to operate Community Media Center(s), and to receive PEG Access funds provided to the cities by state video franchisees (i.e., AT&T and Comcast); and

WHEREAS, The objectives of this partnership are to coordinate and share resources and provide opportunities for access to community media services in the Fresno and Clovis areas; and

WHEREAS, CMAC has entered into a separate agreement with CITY to sublease office and studio space at 1555 Van Ness Avenue (the "Lease"); and

WHEREAS, this Agreement is intended to form a cooperative relationship between CITY and CMAC; and

WHEREAS, as of the date of this Agreement, the PEG Access funds received by CMAC are restricted to capital leases and equipment, and therefore, CMAC and CITY have structured a relationship whereby CITY will provide funds through this Agreement for operations of the community media center in return for specific deliverables as outlined in this Agreement; and

WHEREAS, this Agreement will be administered for CITY by its City Manager (hereinafter referred to as "Administrator") or his/her designee.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and agreements hereinafter set forth, it is mutually agreed as follows:

AGREEMENT

1. Incorporation of Recitals. The above-stated recitals are incorporated herein by reference and are a part of this Agreement.

2. Scope of Services. CMAC shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**. The performance of services pursuant to this Agreement is sometimes referred to herein as the "Project."

3. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and

effect through June 30, 2025, subject to any earlier termination in accordance with this Agreement. The services of CMAC as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in accordance with any performance schedule set forth in **Exhibit A**.

4. Compensation.

(a) CMAC's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of $200,000 annually. CMAC is not entitled to further compensation for expenses incurred in performance of the services.

(b) Excepting the first annual payment, which shall be payable within 30 days of the execution of this contract, or upon the Commencement Date of the Lease (as defined in the Lease), whichever is later, invoices shall be rendered quarterly for services performed in the preceding quarter and will be payable in the normal course of CITY business. Every attempt will be made to pay such invoices within 30 days of receipt.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CMAC's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CMAC shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

5. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CMAC upon the earlier of: (i) CMAC's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CMAC; (ii) CITY's non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; (iii) expiration of this Agreement; or (iv) the expiration or termination of the Lease.

(b) Immediately upon any termination or expiration of this Agreement, CMAC shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CMAC that are owned by CITY. Subject to the terms of this Agreement, CMAC shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CMAC shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CMAC's breach of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY's damages caused by such breach. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CMAC, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CMAC, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under

applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CMAC shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CMAC fails to comply with any terms or conditions of this Agreement.

(f) CMAC shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CMAC and without its fault or negligence, such as acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CMAC shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

6. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CMAC pursuant to this Agreement shall not be made available to any individual or organization by CMAC without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CMAC shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary.

(b) Any and all writings and documents prepared or provided by CMAC pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CMAC shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 6 shall survive expiration or termination of this Agreement.

7. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CMAC represents to CITY that CMAC is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CMAC to do and perform such services in a skillful manner and CMAC agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CMAC from said professional standards.

8. Indemnification. To the furthest extent allowed by law, CMAC shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages

(whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CMAC, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CMAC should subcontract all or any portion of the services to be performed under this Agreement, CMAC shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This Section shall survive termination or expiration of this Agreement.

9. Insurance.

(a) Throughout the life of this Agreement, CMAC shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CMAC or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CMAC shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CMAC of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CMAC shall not be deemed to release or diminish the liability of CMAC, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CMAC. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CMAC, its principals, officers, agents, employees, persons under the supervision of CMAC, vendors, suppliers, invitees, contractors, consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CMAC shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CMAC should subcontract all or any portion of the services to be performed under this Agreement, CMAC shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CMAC and CITY prior to the commencement of any services by the subcontractor.

10. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY's execution of this Agreement, CMAC shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CMAC shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CMAC in such statement.

(b) CMAC shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CMAC shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligence inquiry, CMAC and the respective subcontractor(s) are in full compliance with all laws and regulations. CMAC shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CMAC shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CMAC shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the Administrator, if no actual or potential conflict is involved.

(d) CMAC represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CMAC, nor any of CMAC's subcontractors performing any services pursuant to this Agreement, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Agreement unless fully disclosed to and approved by the Administrator, in advance and in writing. CMAC and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Agreement unless such interest is in accordance with all applicable laws and is fully disclosed to and approved by the Administrator, in advance and in writing. Notwithstanding any approval given by the Administrator under this provision, CMAC shall remain responsible for complying with Section 10(b), above.

(f) If CMAC should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CMAC shall include the provisions of this Section 10 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 10 shall survive expiration or termination of this Agreement.

11. Recycling Program. In the event CMAC maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CMAC at its sole cost and expense shall:

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY's Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact CITY's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of CITY's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

12. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CMAC's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CMAC pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 12(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CMAC shall have provided evidence to CITY that CMAC is licensed to perform the services called for by this Agreement (or that no license is required). If CMAC should subcontract all or any portion of the work or services to be performed under this Agreement, CMAC shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

13. Nondiscrimination. To the extent required by controlling federal, state and local law, CMAC shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CMAC agrees as follows:

(a) CMAC will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CMAC will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CMAC shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CMAC's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CMAC agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CMAC will, in all solicitations or advertisements for employees placed by or on behalf of CMAC in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CMAC will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CMAC's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

14. Independent Contractor.

(a) In the furnishing of the services provided for herein, CMAC is acting solely as an independent contractor. Neither CMAC, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CMAC shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CMAC is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CMAC and CITY. CMAC shall have no authority to bind CITY absent CITY's express written consent. Except to the extent otherwise provided in this Agreement, CMAC shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CMAC and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CMAC shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CMAC shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CMAC's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and

(ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CMAC may be providing services to others unrelated to CITY or to this Agreement.

15. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

16. Binding. Subject to Section 17, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

17. Assignment.

(a) This Agreement is personal to CMAC and there shall be no assignment by CMAC of its rights or obligations under this Agreement without the prior written approval of the Administrator or his/her designee. Any attempted assignment by CMAC, its successors or assigns, shall be null and void unless approved in writing by the Administrator or his/her designee.

(b) CMAC hereby agrees not to assign the payment of any monies due CMAC from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CMAC directly to CMAC.

18. Compliance With Law. In providing the services required under this Agreement, CMAC shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

19. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

20. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

21. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

22. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

23. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

24. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

25. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

26. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, with the exception of the indemnity obligations of CMAC and its subcontractors, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

29. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CMAC.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: Mark Scott
Mark Scott, City Manager

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sherri L Bodeutscher 8/5/10
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: Mark Gleason
Mark J. Gleason,
Deputy City Attorney

Community Media Access Collaborative,
A California non-profit public benefit corporation

By: Jerry Lee

Name: Jerry Lee

Title: CMAC Vice chair
(if corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(if corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:

CITY:
City of Fresno
Attention: Nicole R. Zieba, Deputy City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7774
FAX: (559) 621-7776

CMAC:
Community Media Access Collaborative
Attention: Jerry Lee, Board Member
1555 Van Ness Avenue
Fresno, CA 93721
Phone:
FAX:

Attachments:
Exhibit A - Scope of Services
Exhibit B - Insurance Requirements
Exhibit C - Conflict of Interest Disclosure Form

Exhibit A

SCOPE OF SERVICES
CMAC Service Agreement between the City of Fresno and Community Media Access Collaborative
Public Access Media Services
PROJECT TITLE

The PEG Access services to be provided by CMAC will help create non-commercial community programming for viewing on PEG Access channels operated by CMAC and serving the cities of Fresno and Clovis as well as for distribution through other media such as the Internet.

CMAC will promote and encourage educational institutions, government, non-profit, and other public benefit agencies to utilize available PEG Access resources and facilities.

Specific services to be provided to CITY under this Agreement shall include:

1. In addition to service provided to qualified PEG Access users within the City of Fresno, CMAC will provide specific training support to CITY staff in the techniques of media production and provide technical advice in the execution of productions. CMAC will conduct training sessions specifically for CITY personnel on at least a quarterly basis, on request. Training will be scheduled and presented in collaboration with the CITY's Public Information Office.
2. CMAC will provide up to 25 staff hours for the production of CITY-sponsored programming each month. CMAC will provide all set up, recording, editing, and playback services for these projects. Production shall be coordinated through the CITY's Public Information Office. In the event that CITY departments, officers, Council Members, or other related parties contact CMAC directly for such services, CMAC shall contact the CITY's Public Information Office for authorization to proceed with the requested services. If CMAC fails to acquire the Public Information Officer's authorization to proceed with the programming, that session shall not be counted towards the number of production hours allocated for the month under this Section of the Agreement.
3. In year one of the Agreement, CITY will provide CMAC with a list of requested production equipment, whose cost is not to exceed $60,000, and CMAC will purchase, or lease, that equipment for the CITY's use. CMAC will retain ownership of the equipment and will be responsible for its repair. CITY will provide secure storage space for the equipment and will be responsible for its preventive maintenance. In year two of the Agreement, the equipment requested by City and purchase or leased by CMAC will not exceed $40,000. In years three, four and five of the Agreement, the equipment requested by City and purchase or leased by CMAC will not exceed $15,000 annually. For the remainder of the years of the Agreement, CITY will make its request for equipment replacement by September 1st of each year and CMAC will make every effort to comply, providing that in CMAC's judgment, the equipment request is justified. Should at any time during the length of this Agreement, additional, or replacement equipment be required in order to assure the continued operation of the PEG Access channel(s), CMAC will provide, at CMAC's sole expense, the equipment needed to assure that continued operation. All production equipment provided for CITY use will also be made available, on request, and at mutually agreed to times, to the City of Clovis for its production needs.
4. Within 9 months of the effective date of this Agreement, CMAC will provide an automated transmission and playback system, at CMAC's sole expense, for the

purposes of programming one or more PEG Access channel(s) on a 24-hour basis. System must be capable of delivering full-resolution video and audio signals to CITY's existing and future franchised video providers (currently Comcast and AT&T). System must also provide capability for delivering PEG Access content to the public via the Internet. CMAC will provide CITY with scheduling, transmission and playback services for all PEG Access programming, including support for live programming originating from City Hall. CMAC will operate and maintain the system in proper operating condition throughout the duration of this Agreement; CMAC will provide CITY with use of PEG Access studios and equipment for production activity, training and other related purposes at no charge, according to mutually agreeable scheduling procedures. Studio and equipment scheduling shall be coordinated through the CITY's Public Information Office.

5. Other services may be provided upon mutual agreement between CITY and CMAC.

Exhibit B

INSURANCE REQUIREMENTS
CMAC Service Agreement between the City of Fresno and Community Media Access Collaborative
Public Access Media Services
PROJECT TITLE

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to CMAC's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

CMAC shall maintain limits of liability of not less than:

1. General Liability:

   $1,000,000 per occurrence for bodily injury and property damage
   $1,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Agreement

2. Automobile Liability:

   $1,000,000 per accident for bodily injury and property damage

3. Employer's Liability:

   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

   $1,000,000 per claim/occurrence
   $2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event CMAC purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

CMAC shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and CMAC shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY's Risk Manager or his/her designee. At the option of the CITY's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) CMAC shall provide a financial guarantee, satisfactory to CITY's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.

3. CMAC's insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CMAC and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by CMAC.

2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, CMAC must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CMAC shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CMAC shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY's Risk Manager.

Verification of Coverage

CMAC shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY's Risk Manager or his/her designee prior to CITY's execution of the Agreement and before work commences.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Public Access Media Services
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☐
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☐
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☐
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☐
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☐
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☐
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

_____

_____

_____

_____

☐ Additional page(s) attached.

_____
Signature

_____
(name)

_____
(company)

_____
(address)

_____
(city state zip)

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Public Access Media Services
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☒
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☒
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☒

* If the answer to any question is yes, please explain in full below.
RANDY REED, CMAC Chair, Recused himself from This agreement.

Explanation: _____

_____

_____

_____

_____

_____

☐ Additional page(s) attached.

_____
Signature

Tobny Lee
(name)

CMAC Vice Chair.
(company)

_____
(address)

_____
(city state zip)

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 2:00 pm #3 E
COUNCIL MEETING 6/24/10
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER Mark Scott

Presented to City Council
Date 6/17/10
Disposition Cont one week

June 17, 2010

Presented to City Council
Date 6/24/10
Disposition Re approved

FROM: MARK SCOTT, City Manager

BY NICOLE R. ZIEBA, Deputy City Manager

SUBJECT: APPROVE ALL NECESSARY ACTION TO SUBLEASE SPACE IN THE HISTORIC BEE BUILDING TO THE COMMUNITY MEDIA ACCESS COLLABORATIVE (CMAC), AND ENTER INTO AN AGREEMENT FOR SERVICES BETWEEN THE CITY AND CMAC.

1. ADOPT A FINDING OF CATEGORICAL EXEMPTION UNDER CEQA GUIDELINES, SECTIONS 15301 (LEASE OF EXISTING FACILITIES).
2. APPROVE SUB LEASE AGREEMENT BETWEEN CITY OF FRESNO AND CMAC IN SUBSTANTIAL FORM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE UPON APPROVAL AS TO FORM BY THE CITY ATTORNEY.
3. APPROVE AGREEMENT FOR SERVICES BETWEEN THE CITY AND CMAC IN SUBSTANTIAL FORM, AND AUTHORIZE THE CITY MANAGER TO EXECUTE UPON APPROVAL AS TO FORM BY THE CITY ATTORNEY.

RECOMMENDATION

Staff recommends Council adopt a finding of categorical exemption under CEQA Guidelines, Section 15301 (lease of existing facilities), approve the Sublease with Community Media Access Collaborative (CMAC), and approve the Agreement for Services between the City of Fresno and CMAC.

EXECUTIVE SUMMARY

The City holds title to the Historic Bee Building (formerly the Metropolitan Museum) through the City of Fresno Cultural Arts Properties. There is approximately 38,000 square feet of leasable space in the five-story building. The Community Media Access Collaborative (CMAC) is requesting to lease the second floor of the building. CMAC's operations are consistent with the uses allowed under the New Market Tax Credits regulations. Clearinghouse CDFI, the entity through which the City's tax credits are processed, has recommended that the City lease to this tenant. The complete Council transaction also includes an Agreement for Services between the City and CMAC, whereby the City will receive specific deliverables from CMAC. In total, the City will net approximately $100,000 annually from CMAC, which will help defray the City's annual debt service payments on the Historic Bee Building.

BACKGROUND

On March 18, 2010, the City Council approved the use of New Market Tax Credits for refinancing the Historic Bee Building (formerly the Metropolitan Museum). The Tax Credit transaction requires that the City hold the property for seven years and that the City make all reasonable attempts to lease space in the building to tenants who meet Tax Credit eligibility criteria.

The City has been in negotiations with CMAC about leasing space in the Historic Bee Building. CMAC is a 501(c)3 non-profit corporation with the mission to provide access to television broadcast equipment, training,

and air time for members of the public. CMAC receives Public, Education, Government (PEG) funds that are included as part of the City's cable franchise fee from Comcast. Specifically, the Fresno/Clovis Community Media Authority, a joint powers agency created by the Cities of Fresno and Clovis to act as their jointly designated PEG provider, has designated CMAC as the access management organization to manage and administer the PEG access channels, to operate Community Media Center(s), and to received PEG funds provided to the Cities of Fresno and Clovis by state video franchisees, such as Comcast. CMAC has been seeking lease space in which to house its multi-media production facilities, which are made available to members of the community including schools, public agencies, non-profits, community based organizations, faith institutions, advocacy groups and individuals for the production of programming. CMAC then transfers the final productions to Comcast, which broadcasts the programming through the designated PEG channels. This use supports the City's desire to catalyze activity in the Cultural Arts District. There is a synergy between the public access work that CMAC will perform and the public television and arts museum that share the corner of Van Ness and Calaveras. These uses draw members of the public from various parts of the community and bring activity and vibrancy throughout the week and weekend.

CMAC is interested in leasing the entire second floor of the Historic Bee Building for office and studio space. Funding for the lease is stable, as the PEG funds are called for in the State franchise agreements with Comcast and other cable operators. Clearinghouse CDFI and U.S. Bank, the other parties in the City's New Market Tax Credit financing transaction, have both approved the concept of CMAC being an anchoring tenant in the building.

Lease Terms

The Lease Terms include the following:

- Lease to cover the entire second floor
- 15 year term
- $300,000 annual payment to the City, increased by 1% per year beginning in the eighth year of the lease
- City to pay CMAC a one-time $20,000 tenant improvement allowance
- CMAC to complete its own tenant improvements
- City to provide all utilities, maintenance, and common space security

An important element in this lease is that CMAC will be completing all of its own tenant improvements. The second floor requires major alteration to separate it off from the third floor above, which shares a grand foyer and staircase with the second floor. The heating and air system ducting will likely need to be reconfigured for those two floors as well. If the two floors are not separated, the only way to lease the space is to lease it together as a two-floor space. The potential of any one tenant desiring a space that has such an awkward configuration is low. If the City were to fund this improvement, it would cost approximately $200,000 - $400,000. Under the lease agreement, however, these costs will be borne by CMAC.

Given the fact that there is only one electrical meter in the building, the City has agreed to cover the utility costs for the tenant. The City has required that CMAC pursue energy efficient lighting and upgrades to its studio and office equipment. The lease does contain a provision that requires the parties to renegotiate the utility cost portion of the lease if utility costs are found to be excessive after CMAC begins operations. It is important to note that, as other tenants begin to occupy the building, utility costs will be offset by the additional lease fees that the City nets.

Agreement for Services between the City of Fresno and CMAC

Due to the way the federal law regarding PEG funds is written, CMAC can only use their funds for capital, not operating expenses, which has made it very difficult for CMAC to establish its business and begin providing access services to the public. Many cities around California have formed partnerships with their local PEG providers, whereby the PEG provider pays a flat space cost to the City, and the City then creates an Operating Agreement with the PEG provider to infuse operating money into the entity. This creates a good solution for the City and CMAC, since the City has been actively encouraging CMAC to begin operating and offering access to members of the public who might not otherwise have access to media services. The Agreement for Services will ensure that the City receives specific, valuable services. The structure only works if both agreements, the Sub Lease Agreement and the Agreement for Services, are both approved. CMAC will pay the City a flat rate of $300,000 annually (increased by 1% per year beginning in the eighth year of the lease) to lease one floor in the Historic Bee Building. The City will then provide $200,000 annually back to CMAC through the Agreement for Services. In return for the operating funds, CMAC will provide specific services, as outlined in the Agreement. The City will net $100,000 from this transaction annually, minus the utility costs, and will be able to apply net proceeds from the $100,000 to the annual debt service on the building.

CEQA Compliance

The Historic Bee Building is listed on the National Register of Historic Places as well as Fresno's Local Register of Historic Resources and therefore is subject to the provision of the City's Historic Preservation Ordinance (FMC, Chapter 12, Article 16). The proposed term of the lease is fifteen years. CMAC intends to use a portion of the space to house its multi-media production facilities, which are then made available to members of the community including schools, public agencies, non-profits, community based organizations, faith institutions, advocacy groups and individuals for the production of programming. The remainder of the space will be used for administrative functions supporting its multi-media operations. The lease agreement provides for minor alterations to the portion of the building leased to CMAC, including installation of partitions, to accommodate CMAC's use of the space. The lease does not allow for any modifications or alterations to the exterior of the Historic Bee Building except for the installation of a communication beacon, approximately 18 inches in height, on the roof of the building which will not be visible from street level or from adjacent buildings and therefore will not impact the historic character of the building.

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemption set forth in CEQA Guidelines, section 15301 as this is a proposed lease of space within an existing building owned/leased by the City, which will not result in the expansion of capacity of the building. Furthermore, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

FISCAL IMPACT

CMAC will pay the City $300,000 annually for the next 15 years for a sublease of the second floor of the Historic Bee Building. CMAC will fund any needed tenant improvements for the space, which are anticipated to be between $200,000 and $400,000. The City will provide utilities and maintenance services for the building. Through the Agreement for Services, the City will provide $200,000 annually to CMAC for specific deliverables, as defined in the Agreement. Not including customary and usual building expenses, the City will net $100,000 annually from CMAC through the transactions. These funds will offset the annual debt service payment for the building.

Attachments: 1) Lease Agreement for 1555 Van Ness Avenue
2) Agreement for Services between the City of Fresno and Community Media Access Collaborative