

**CONTRACT BETWEEN THE FRESNO/CLOVIS COMMUNITY MEDIA AUTHORITY  
AND  
COMMUNITY MEDIA ACCESS COLLABORATIVE**

**AGREEMENT**

This Agreement is made this 17<sup>th</sup> day of September, 2009, by and between the Fresno/Clovis Community Media Authority ("FCCMA"), a joint powers agency of the State of California, and the Community Media Access Collaborative ("CMAC"), a California nonprofit corporation, who agree as follows:

**RECITALS**

1. The FCCMA, a joint powers agency organized under Section 6500 et seq. of the Government Code of the State of California, includes as its members at the time of this Agreement the Cities of Fresno and Clovis, pursuant to Joint Powers Agreement effective ( ) 1, 200( ), incorporated herein.
2. The FCCMA was created by the Cities of Fresno and Clovis to act as their jointly designated PEG provider, which is responsible for negotiating and entering into a an agreement with CMAC to manage and administer PEG channels, programming, and services.
3. Comcast and AT&T ("State Franchisees") have each been granted a state franchise to provide video services in the cities represented by FCCMA by the California Public Utilities Commission pursuant to the Digital Infrastructure and Video Competition Act ("DIVCA").
4. DIVCA provides that certain channel capacity shall be provided for public, educational, and government ("PEG") access.
5. DIVCA authorizes FCCMA member jurisdictions to receive certain grant payments from State Franchisees for PEG access purposes as defined by Section 5870(n) of DIVCA.

6. FCCMA member jurisdictions have each authorized the receipt of such PEG channels and payments via City of Fresno Ordinance 2007-94 and City of Clovis Ordinance 07-36.
7. The FCCMA has determined that it wishes to designate CMAC as the access management organization to develop, manage and administer the PEG access channels and to operate one or more Community Media Centers.
8. CMAC has agreed to serve FCCMA by developing, programming, and administering the PEG access channels, and operating one or more Community Media Centers from which to provide services as described herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the resources provided by the FCCMA to CMAC, pursuant to this Agreement, CMAC shall provide the following services:

- A. *OPERATE PUBLIC ACCESS CABLE CHANNEL(S).* Operate the public access cable channel(s) for public/community access programming purposes in a manner that is consistent with the principles set forth under federal and state law, with the primary purpose being to administer, coordinate, and assist those requesting access on a non-discriminatory basis.
- B. *OPERATE EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS.* Operate the educational and governmental access channel(s), with the primary purpose being to administer, coordinate, and assist the Cities and educational institutions requesting access on a non-discriminatory basis.
- C. *OPERATE A COMMUNITY MEDIA CENTER(S).* Manage one or more community media production facility(ies) and equipment, available for public use at such hours and times as are determined by CMAC. Access to equipment and facilities shall be open to all those who: (1) satisfactorily complete required training classes provided by CMAC; or (2) receive certification from CMAC, identifying said persons as having satisfied

training requirements through other means.

D. *PROVIDE NONDISCRIMINATORY ACCESS.* Provide access to the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to residents of the cities represented by FCCMA for non-commercial programming purposes, whether individuals or organizations, pursuant to operating rules promulgated by CMAC.

E. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channels. The policies and procedures shall be filed with the FCCMA and shall be provided to any resident of the cities represented by FCCMA who requests them.

F. *COMPLIANCE WITH LAWS, RULES, AND REGULATIONS.* Administer the PEG access channels and facilities in compliance with applicable laws, rules, and regulations.

G. *TRAINING.* Train CMAC members and residents of the cities represented by FCCMA in the techniques of media production, and provide technical advice in the execution of productions.

H. *PROGRAMMING DISTRIBUTION.* Provide for the distribution of PEG access programming through playback/cablecasting/ webcasting or other readily available means of distribution of programs on the PEG access channels. Within twelve months of the completion and opening of a Community Media Center for use by the public, CMAC shall cablecast an average of at least 20 hours of programming per week.

I. *MAINTENANCE OF EQUIPMENT.* Provide regular maintenance and repair of all equipment purchased with monies received pursuant to this Agreement.

J. *PROMOTION.* Actively promote the use and benefits of the PEG access channels and facilities to cable subscribers, the public, and PEG access users.

K. *PERFORMANCE REVIEW.* CMAC at its sole cost shall, after four (4) years of operation under this Agreement, contract with an entity from outside Fresno that is expert in PEG access matters to conduct a performance review of CMAC's operations. CMAC and FCCMA shall meet and confer to identify an expert that is mutually agreeable to both parties. This review shall include an opportunity for PEG access users and cable subscribers to provide input. Upon completion, a copy of the

performance review shall be submitted to FCCMA.

L. *OTHER ACTIVITIES.* Undertake other PEG access activities and services as deemed appropriate by CMAC and that are consistent with the obligation to facilitate and promote PEG access programming and provide non-discriminatory access.

SECTION 2. PUBLIC ACCESS CHANNELS OPEN TO PUBLIC: CMAC agrees to keep the public access channel(s) open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither FCCMA, State Franchisees, nor CMAC shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Provided that, nothing herein shall prevent CMAC, FCCMA, or State Franchisees from producing or sponsoring programming, prevent FCCMA or State Franchisees from underwriting programming, or prevent FCCMA, State Franchisees, or CMAC from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable law and rules for use of the channel(s). CMAC may develop and enforce policies and procedures which are designed to promote local use of the channel(s) and make programming accessible to the viewing public, consistent with such time, place, and manner regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 3. INDEMNIFICATION. CMAC shall indemnify, defend, and hold harmless FCCMA, its directors, officers, agents, volunteers and employees 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 acts or omission of CMAC, its directors, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

In addition and without limiting the foregoing, CMAC shall indemnify and hold harmless FCCMA, its directors, officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out 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 CMAC's use of channels, funds, equipment, facilities or staff granted under this Agreement or franchise agreements issued to State Franchisees.

FCCMA shall indemnify, defend, and hold harmless CMAC, its directors, officers, agents, volunteers and employees 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 willful misconduct or negligent acts or omission of FCCMA, its directors, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

SECTION 4. COPYRIGHT CLEARANCE. Before telecast of any program material, CMAC shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast or distributed through any other means such as the Internet and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit their program material over the PEG access channels that are operated and managed by CMAC. CMAC shall maintain for inspection by FCCMA, upon reasonable notice by FCCMA and for the term of the applicable statute of limitations, copies of all such user agreements.

SECTION 5. COPYRIGHT AND OWNERSHIP. CMAC shall own the copyright of any programs which it may choose from time to time to produce. Copyright of programming produced by other parties shall be held by the persons who produced said programming.

SECTION 6. DISTRIBUTION RIGHTS.

A. CMAC shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures.

B. At the beginning and end of each day that programming is cablecast on the PEG access channels whose use is authorized by this Agreement, CMAC shall display a credit stating, "Partial funding for the operation of this channel is provided by the Fresno/Clovis Community Media Authority". Such credit shall also state that opinions expressed in PEG access programs are the sole responsibility of the program producers.

SECTION 7. EQUIPMENT AND FACILITIES.

A. CMAC shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement.

B. CMAC shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement.

To secure all of its obligations under this Agreement, CMAC hereby grants to the FCCMA a security interest in the assets and interests owned or hereafter acquired by CMAC with funds provided by FCCMA, and the proceeds thereof, including but not limited to CMAC deposit accounts, inventory, and all equipment and fixtures acquired with funds provided by FCCMA. CMAC agrees to take all steps reasonably requested by FCCMA to perfect and enforce the security interest of FCCMA, including the

execution and processing of financing statements and continuation statements under the California Uniform Commercial Code. CMAC will also notify any institution with which it now or hereafter maintains any deposit account of the existence of a security interest by FCCMA in the account.

FCCMA agrees to subordinate its interest if necessary to finance the purchase of equipment or property necessary to carry out the purpose of this Agreement. The subordination shall only be with respect to the specific equipment or property that CMAC might wish to finance.

C. Upon the earlier of termination, expiration or dissolution of CMAC, it shall, subject to the approval of FCCMA, transfer all assets of CMAC representing equipment and facilities owned by CMAC and funded by FCCMA, and/or the proceeds of either to such organization or organizations designated by FCCMA to manage PEG access which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any superseding law).

SECTION 8. INSURANCE. CMAC shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The insurance shall be issued by insurance company(ies) admitted to do business in California and rated no less than "A-VII" in Best's Insurance Rating Guide. The cost of such insurance shall be borne by CMAC and may be included in its annual budget. CMAC shall discontinue work hereunder in the absence of such coverages.

A. *COMPREHENSIVE LIABILITY INSURANCE.* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage, Personal injury, and Advertising injury coverages, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be at a minimum: (1) bodily injury including death, \$1,000,000 for each Person, each occurrence and aggregate; and (2) property damage, \$1,000,000 for each occurrence and aggregate.

B. *EQUIPMENT INSURANCE.* Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. The insurance shall include, at a minimum insurance against loss or

damage beyond the user's control, theft, fire or natural catastrophe. The FCCMA shall be shown as lien holders on all policies.

C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability with limits as required by California law with an insurance carrier satisfactory to the FCCMA. Such policy shall contain a waiver of subrogation as to FCCMA and its directors, officers, agents, employees and volunteers.

D. *CABLECASTER'S ERRORS AND OMISSIONS INSURANCE.* Insurance shall be maintained to cover the content of productions which are cablecast on the PEG access channels in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual PEG access producers.

E. *FCCMA AS CO-INSURED OR ADDITIONAL INSURED.* FCCMA shall be named as co-insured or additional insured on all aforementioned insurance policies. The policies shall provide that the insurance company or CMAC may affect no cancellation, major change in coverage or expiration without first giving FCCMA thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the FCCMA, their officers, agents, employees, or volunteers shall be in excess of CMAC's insurance and shall not contribute to it. CMAC shall pay all deductibles. FCCMA shall be provided with copies of policies upon its reasonable request.

F. *NOTIFICATION OF COVERAGE.* CMAC shall file with the FCCMA proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation upon commencement of the employment of the Executive Director; (2) equipment insurance upon the acquisition of any equipment; and (3) cablecaster's errors and omissions insurance within thirty (30) days of the date that CMAC commences cable casting of programming on the Comcast cable system.

#### SECTION 9. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

A. CMAC shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual

orientation, marital status, ancestry, national origin or physical or mental disability.

B. CMAC shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin or physical or mental disability.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that CMAC is an independent contractor and that no relationship of principal/agent or employer/employee exists between FCCMA and CMAC. If in the performance of this Agreement any third persons are employed by CMAC, such persons shall be entirely and exclusively under the control, direction and supervision of CMAC. Without limiting the foregoing, FCCMA shall have no responsibility or liability as to terms of employment, including hours, wages, employee benefits, working conditions, discipline, hiring and discharging or any other term of employment, which shall be determined by CMAC, and FCCMA shall have no right or authority over such Persons or terms of employment. No third party shall be a beneficiary under this Agreement.

SECTION 11. ASSIGNMENT OR TRANSFER. Neither this Agreement nor any interest herein shall be assigned or transferred by CMAC, except as expressly authorized in writing by FCCMA.

SECTION 12. ANNUAL REPORTS. Prior to April 15 of each year, CMAC shall submit to FCCMA an annual report regarding its activities during the preceding fiscal year (January 1 - December 31). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and services provided;
- B. Current and complete listing of CMAC's Board of Directors; and
- C. Year-end financial statements reviewed by a certified public accountant.
- D. A current inventory of equipment used to provide PEG programming (including date of acquisition, condition, and anticipated useful lifespan).

SECTION 13. RECORDS, FISCAL AUDIT.

A. CMAC shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

B. Upon reasonable request from FCCMA, CMAC shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.

C. After the second full fiscal year of operation under this Agreement, CMAC shall prepare (or have prepared) and submit to the FCCMA a fiscal audit by an independent certified public accountant. Thereafter, CMAC shall prepare (or have prepared) and submit to the FCCMA a fiscal audit by an independent certified public accountant at least every three (3) years.

SECTION 14. FUNDING AND OTHER RESOURCES. The parties to this Agreement acknowledge that the primary funding source for the services described herein is a PEG access fee that is provided to the member jurisdictions of the FCCMA by the various video service providers providing such services in Fresno and Clovis as licensed by the California Public Utilities Commission pursuant to DIVCA. Pursuant to Section 5870(n) of DIVCA those PEG funds can only be used for PEG related purposes. FCCMA was established by its member jurisdictions to provide the mechanism for the delivery of PEG programming and services to the member cities of the FCCMA using said funds.

The FCCMA agrees to make the following funds and resources available to CMAC:

A. The California Public Utilities Commission has granted to each State Franchisee a franchise to provide video services in the cities represented by the FCCMA. Pursuant to those state franchises and to City of Fresno Ordinance 2007-94 and City of Clovis Ordinance 07-36, each State Franchisee is obligated to provide to each FCCMA member jurisdiction a minimum of three and a maximum of four channels for PEG access purposes. The FCCMA agrees to permit CMAC to manage that bandwidth/channel capacity for PEG access programming purposes.

B. Pursuant to those state franchises and to City of Fresno Ordinance 2007-94 and City of Clovis Ordinance 07-36, each State Franchisee is obligated to provide to FCCMA member jurisdictions for PEG access purposes one percent (1%) of its gross revenues derived from the delivery of video services in Fresno and Clovis.. FCCMA

shall transfer to CMAC any accrued funds and interest on those funds received from FCCMA member jurisdictions for PEG purposes within thirty (30) days of CMAC submitting and FCCMA approving a budget for its first fiscal year. Thereafter, no later than thirty (30) days after FCCMA receives the quarterly PEG fee payment from FCCMA member jurisdictions, FCCMA shall transfer those funds to CMAC.

C. State Franchisee's are obligated pursuant Section 5870 of DIVCA to provide to FCCMA member jurisdictions connectivity necessary to transport/interconnect PEG programming from public, educational, and government primary program origination sites to the State Franchisee for transmission on PEG channels to cable/video service subscribers. FCCMA shall transfer to CMAC the ability to use this PEG connectivity to deliver PEG programming. CMAC shall work in collaboration with FCCMA member jurisdiction to assure that such connectivity is activated for PEG purposes.

D. Should the PEG access obligations of State Franchisees serving FCCMA member jurisdictions be modified, CMAC and FCCMA will meet and confer to determine if and if so how this Agreement would need to be modified to accommodate the changed PEG obligations of the State Franchisees.

E. Nothing in this Agreement shall be deemed to prohibit FCCMA from contracting with CMAC for additional services.

#### SECTION 15. ANNUAL PLAN AND BUDGET.

A. By no later than ~~Dec 31, 2009~~ Dec 31, 2009 CMAC shall provide FCCMA a copy of its business plan and budget for its first fiscal year of operation under this Agreement. Thereafter, by no later than October 30 of each year in which this Agreement is in effect, CMAC shall provide to FCCMA an "Annual Plan and Budget" outlining activities and programs planned for the following fiscal year with funds and other resources provided by the FCCMA. Such plan shall contain:

1. A statement of the anticipated number of hours of PEG access

- programming to be cablecast;
2. Training classes to be offered and frequency of classes;
  3. Other PEG access activities planned by CMAC;
  4. An operating and capital equipment and facilities budget; and
  5. Grantwriting or fundraising activities and estimated level of funding to be generated from such activities.

SECTION 16. EXPENDITURE OF FUNDS. CMAC shall spend funds received from the FCCMA for the general purposes listed in its Annual Plan and Budget and Section 1 ("Scope of Services") of this Agreement. CMAC shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from the FCCMA.

SECTION 17. FUNDING FROM OTHER SOURCES. CMAC may, during the course of this Agreement, receive supplemental funds from other sources, including but not limited to fundraising activities.

SECTION 18. TERM OF AGREEMENT. This Agreement shall be for an initial term of five (5) years commencing on October 1, 2009 and ending on September 30, 2014 unless terminated earlier, as provided for in this Agreement. This Agreement may be renewed or extended, by mutual agreement of FCCMA and CMAC, in writing, for additional periods in accordance with Section 20 of this Agreement.

SECTION 19. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. The FCCMA shall have the right upon one hundred twenty (120) days written notice to CMAC to terminate this Agreement for:
1. Material breach of any provision of this Agreement by CMAC;
  2. Malfeasance, misfeasance, misuse of funds; or
  3. Loss of 501(c)(3) status by CMAC or revocation or suspension of its Articles of Incorporation by the State of California; or

4. Failure of State Franchisees to provide funds obligated for PEG purposes to Cities resulting in Cities inability to provide FCCMA funding.
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- B. The written contract violation notice provided by FCCMA shall cite the specific section of this Agreement which FCCMA believes CMAC to have breached and provide sufficient detail to permit CMAC to clearly understand the nature of the cure requested by FCCMA.
  - C. CMAC may avoid termination by curing any such breach to the satisfaction of the FCCMA within one hundred twenty (120) days of notification or within a time frame agreed to by the FCCMA and CMAC. If the nature of the default is such that more than one hundred twenty (120) days are reasonably required for its cure, then CMAC shall not be deemed to be in default if it has commenced a cure within the one hundred twenty (120) day period and thereafter diligently prosecutes such cure to completion within the time period reasonably established by the FCCMA.
  - D. Upon termination or expiration of this Agreement, CMAC shall immediately transfer all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by CMAC with funds received pursuant to this Agreement to such organization or organizations designated by the FCCMA to manage PEG access, which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any superseding law).

SECTION 20. EXTENSION OF AGREEMENT. This Agreement may be extended for an additional term of three (3) years upon FCCMA's approval of the written request of CMAC filed with the FCCMA at least one hundred and twenty days (120) before the expiration of the initial term provided that CMAC is in compliance with the terms of this

Agreement. CMAC shall be deemed in compliance with this Agreement unless the FCCMA has provided CMAC with a notice of violation and such violation is not timely cured. This Agreement may be further extended, by mutual agreement of the FCCMA and CMAC, in writing, for additional three-year terms.

SECTION 21. TIME. Time is of the essence in this Agreement and for the Performance of all covenants and conditions of this Agreement.

SECTION 22. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 23. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of California.

SECTION 24. 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:

Fresno/Clovis Community Media Authority  
c/o Office of the City Clerk  
2600 Fresno Street  
Fresno, CA 93721

Community Media Access Collaborative  
c/o Roberta Barton, Secretary  
Fresno County Public Library  
2420 Mariposa Street  
Fresno, CA 93721

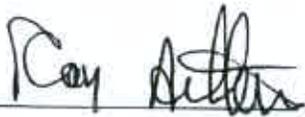
Any party may change its address by written notice to the other parties at any time.

SECTION 25. 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 and no purported oral amendment to this Agreement shall be valid.

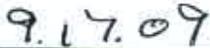
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

**Fresno/Clovis Community Media Authority, a joint powers agency of the State of California.**

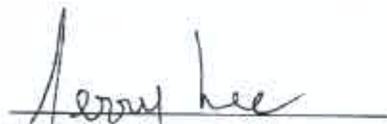
**Community Media Access, Collaborative, a California nonprofit Corporation.**



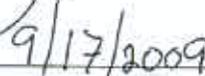
Name



Date



Chairperson, Board of Directors



Date