

AGREEMENT BETWEEN THE CITY OF CLEARLAKE, CITY OF LAKEPORT AND COUNTY OF LAKE FOR OPERATION OF A LOCAL PUBLIC, EDUCATIONAL, GOVERNMENTAL (PEG) CABLE TELEVISION CHANNEL

THIS AGREEMENT is entered into this 16th day of July, 2019, by and between the City of Clearlake, City of Lakeport and County of Lake, for operation of a local public, educational, governmental cable television channel, hereinafter referred to as Lake County PEG TV.

RECITALS

WHEREAS, the California State Legislature passed the Digital Infrastructure and Video Competition Act (DIVCA) of 2006 (Public Utilities Code Section 5800, et seq.), shifting cable television franchising from local to State control, and establishing a 5% fee on the franchise holder's gross revenues, remitted to the local jurisdiction for use of Public Rights of Way; and

WHEREAS, DIVCA additionally enabled jurisdictions within the territory served by a cable television provider holding a State franchise to, by Ordinance, establish a 1% fee on the gross revenues of said provider to support Public, Educational and Governmental (PEG) television facilities; and

WHEREAS, in 2015, the City of Clearlake, City of Lakeport and County of Lake entered into a written Agreement for the operation, maintenance and funding of the PEG Channel in the best interest of the citizens of Lake County; and

WHEREAS, all parties are in accord that a new Agreement shall be developed, to continue PEG TV's service for Lake County residents.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED by the parties hereto as follows:

1. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE OF THE LAKE COUNTY PEG TV

BOARD OF DIRECTORS

- A. The County of Lake, City of Lakeport and City of Clearlake agree to jointly administer and manage the Lake County PEG TV Channel, through establishment of the Lake County PEG TV Board of Directors.
- B. The five-member Lake County PEG TV Board of Directors shall be comprised of the following:
 - One (1) member appointed by the Lake County Board of Supervisors
 - One (1) member appointed by the City Council of the City of Clearlake
 - One (1) member appointed by the City Council of the City of Lakeport

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- Two (2) at-large members, appointed by a majority vote of the three Directors representing the parties to this Agreement

C. Terms of office:

- The term of the three (3) board members appointed by the County and Cities shall expire on the first Monday in January of every even-numbered year
- The term of the two (2) at-large board members shall expire on the first Monday in January of every odd-numbered year.

Upon expiration, board members may apply for reappointment. Each member shall serve until his or her successor is duly qualified and appointed.

2. DUTIES AND POWERS OF THE LAKE COUNTY PEG TV BOARD OF DIRECTORS

The Board of Directors so established shall be responsible for:

- A. Prescribing all rules and regulations for the operation and management of the PEG channel, including adoption of community programming policies;
- B. Establishing the duties and providing general supervision of the Lake County PEG TV Manager;
- C. Securing underwriting funds for operation of the PEG Channel;
- D. Reviewing and authorizing the expenditure of funds provided by the parties to this Agreement for operation of the PEG Channel;
- E. Reviewing and authorizing capital expenditures, funded by the 1% fees collected pursuant to Section 5870 (n) of the Public Utilities Code;
- F. By December 1 each fiscal year, providing fiscal-year-to-date expenditure reports to each participating agency.
- G. By March 1 each fiscal year, preparing and submitting to the County Administrative Office and City Managers' Offices:
 - An Operating Budget; and
 - A Capital Budget.

The Lake County PEG TV Board of Directors will ensure capital expenditures are consistent with FCC regulations; i.e. capital equipment, such as vans, studios, cameras, and/or PEG facilities-related expenses.

March 1 budget submissions shall be accompanied by a report and records documenting fiscal-year-to-date and prior fiscal year operating and capital expenditures.

- H. By April 1 each fiscal year, reporting on the status of Lake County PEG TV before the governing body of each entity party to this Agreement.
- I. Providing for the maximum public benefit and use of the PEG Channel, by supporting progress relevant to the Performance Measures described in Section 6 of this Agreement; and
- J. Recommending modification of this Agreement as may be deemed appropriate; and
- K. Upon any pending termination of this Agreement, recommending the manner of disposition of property and improvements purchased with funding provided through this Agreement.

3. LEAD AGENCY

The City of Clearlake shall be the Lead Agency in administering Lake County PEG TV. Any employees or contractors hired to operate the PEG Channel under the supervision of the Lake County PEG TV Board of Directors shall be employees or contractors of the City of Clearlake. Any change of Lead Agency must be enacted by written agreement of all parties.

4. FISCAL OBLIGATIONS OF THE PARTIES

- A. Operating Budget Support. The County of Lake, City of Clearlake and City of Lakeport will allocate operating funds in each fiscal year throughout the term of this Agreement.

Annual allocations are expected in the following amounts:

- City of Clearlake (\$8,000);
- City of Lakeport (\$2,000); and
- County of Lake (\$15,000).

The City of Clearlake’s contribution may be provided in-kind, e.g. provision of or for staffing, facilities, insurance and other operating needs.

As described in Section 2 (H), above, by April 1, a representative of the Lake County PEG TV Board of Directors will report on the status of the PEG Channel before the governing body of each jurisdiction.

Upon completion of said presentation, funds allocated to the PEG Channel shall be distributed c/o the City of Clearlake within 15 days.

Upon receipt, said monies shall be deposited in a special agency fund established by the Finance Director of the City of Clearlake, and shall be used exclusively for payment of expenses incurred in operating the PEG Channel, as authorized by the Lake County PEG TV Board of Directors.

1 B. Capital Budget Support. It is further understood and agreed that the Clearlake City Council,
 2 Lakeport City Council and Lake County Board of Supervisors have implemented that portion of
 3 Section 5870(n) of the Public Utilities Code which enables each of their respective
 4 governmental entities to impose an additional franchise fee specifically and exclusively for
 5 purposes of funding to support PEG Channel capital expenses consistent with federal law.
 6 Revenues generated from this fee are remitted to the respective local governments by
 7 Mediacom. The City of Clearlake, City of Lakeport, and County of Lake shall forward all such
 8 revenues to the City of Clearlake to deposit into a special agency fund for the capital budget to
 9 be utilized exclusively for legally allowable capital expenses incurred by the PEG Channel.
 10 Revenues not spent in the current fiscal year may be retained for qualifying use in future fiscal
 11 years.

12 C. Fiscal Records. As the Lead Agency, the City of Clearlake shall prepare and maintain
 13 accounting records and adopt fiscal policies and practices that are in compliance with standard
 14 governmental accounting practices.

15 The City of Clearlake shall timely furnish the Lake County PEG TV Board of Directors with all
 16 documentation necessary to distribute December and March annual reports, as described in
 17 section 2 (G). All documentation detailing how funds provided under this Agreement are
 18 expended shall be maintained by the City of Clearlake for the current and three previous fiscal
 19 years. The parties may request any available fiscal records at any time.

20 D. Non-appropriation. In the event any party to this Agreement does not appropriate the amount
 21 specified in section IV (1) in their annual budget, that party shall have the right to withhold the
 22 amount without incurring any damages or penalties. If such funding is not provided in one fiscal
 23 year, the governing body of the party withholding said monies shall consider providing that
 24 amount in the next fiscal year, in addition to the monies provided for the current year.

5. TERM OF AGREEMENT

26 This Agreement shall begin on the date of execution by all parties to this Agreement, and shall continue
 27 in full force and effect until June 30, 2021, unless terminated as hereinafter provided. By March 1,
 28 2021, the City Managers of each City and the County Administrative Officer shall meet to discuss the
 29 extension of this Agreement for an additional two-year period.

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6. PERFORMANCE MEASURES

Except as specified below, timelines and oversight will be established by the Lake County PEG TV Board of Directors, in the following areas of priority:

- A. **By June 30, 2020**, work with staff from each jurisdiction to equip all Board rooms with high quality Audio/Visual technology, to ensure the accessibility of Council and Board meetings; and
- B. Enable content providers to upload video content for broadcast on the PEG Channel, and provide clear instructions for the public on any requirements for submission; and
- C. Live stream Lake County PEG TV content via YouTube or a similarly freely and publicly available channel that offers multilingual Closed Captioning, and promote the availability of this content through appropriate Social Media; and
- D. **By December 31, 2019**, provide equipment and training to County Library staff, to facilitate broad access to digital video tools, promoting digital literacy in Lake County; and
- E. Document and report upon fundraising/underwriting efforts at Lake County PEG TV Board Meetings, and provide updates to the Cities and County, upon request.

7. TERMINATION

Any party to this Agreement may withdraw from the Agreement by submitting a letter of withdrawal to the Board of Directors no later than May 1st of each year, to become effective on June 30th. Additionally, the parties may mutually agree to terminate this Agreement at any time, with 90 days' notice.

8. MODIFICATION

This Agreement may only be modified by a written amendment thereto, executed by all parties.

9. NOTICES

All notices that are required to be given by one party to the other party under this Agreement shall be in writing, and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with the United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

County of Lake	City of Clearlake	City of Lakeport
Administrative Office	City Manager	City Manager
255 N. Forbes St.	14050 Olympic Dr.	225 Park St.
Lakeport, CA 95453	Clearlake, CA 95422	Lakeport, CA 95453

10. EXHIBIT

Exhibit "A" – Compliance Provisions, is incorporated herein by reference.

11. ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussion hereto and between the parties related to the subject matter of this Agreement.

Agreement Between the City of Clearlake, City of Lakeport and County of Lake for Operation of a PEG Cable Television Channel, executed July 16, 2019.

IN WITNESS WHEREOF, the parties have executed this Amendment by their proper officers.

COUNTY OF LAKE

[Handwritten signature]



Chair, Board of Supervisors

7-16-19

Date executed

ATTEST: CAROL J. HUCHINGSON

Clerk to the Board of Supervisors

APPROVED AS TO FORM:

ANITA L. GRANT

County Counsel

By:

[Handwritten signature]

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CITY OF CLEARLAKE

Russell Comer

Mayor, City of Clearlake

July 25, 2019

Date executed

ATTEST: City Clerk

APPROVED AS TO FORM:

RYAN JONES

City of Clearlake, Attorney

By: Melina Swanson

Ryan Jones

CITY OF LAKEPORT

SEE ATTACHED

Mayor, City of Lakeport

Date executed

ATTEST: City Clerk

APPROVED AS TO FORM:

DAVID RUDERMAN

City of Lakeport, Attorney

By: _____

PEG AGREEMENT

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CITY OF CLEARLAKE

SEE ATTACHED

Mayor, City of Clearlake

Date executed

ATTEST: City Clerk

APPROVED AS TO FORM:

RYAN JONES

City of Clearlake, Attorney

By: _____

CITY OF LAKEPORT

[Signature]

Mayor, City of Lakeport

9/3/19

Date executed

ATTEST: City Clerk

APPROVED AS TO FORM:

DAVID RUDERMAN

City of Lakeport, Attorney

By: Kelly Buendia

[Signature]

EXHIBIT "A" – COMPLIANCE PROVISIONS

1. NON-DISCRIMINATION

In the performance of the work authorized under this Agreement, the parties shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.

2. INDEMNIFICATION AND HOLD HARMLESS

Each party shall indemnify and hold the other parties harmless against all actions, claims, demands, and liabilities, and against all losses, damages, costs, expenses, and attorney's fees, arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claims, demands, liabilities, losses, damages, costs, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party.

The obligations under this Section shall survive the termination of the Agreement.

3. DUE PERFORMANCE – DEFAULT

Each party agrees to fully perform all aspects of this Agreement. If any default occurs, a party shall give written notice of said default to the other parties. If the party in default does not fully correct (cure) the default within 30 days of that notice (i.e. the time to cure), then such party shall be in default.

The time period for corrective action of the party in default may be extended upon written agreement, executed by all parties. The executed notice must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision, and shall demand that the party in default perform the provisions of this Agreement within the applicable period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

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1 **4. INSURANCE**

2 As the Lead Agency, the City of Clearlake shall procure and maintain, at its own expense during the
3 term hereof, the following:

4 **A. Compensation Insurance.** Workers' Compensation Insurance and Employer's Liability
5 Insurance, as required by the State of California, for all employees to be engaged in work under
6 this Agreement. In any case such work is contracted, contractors shall be required similarly to
7 provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the
8 latter's employees to be engaged in such work, unless such employees are covered by the
9 protection afforded by Contractor's Workers' Compensation Insurance and Employer's Liability
10 Insurance. Employer's Liability Insurance shall be in an amount not less than One Million
11 Dollars (\$1,000,000.00) per occurrence.

12 **B. Commercial General Liability.** Upon itself and its employees at all times during the course of
13 this Agreement, Commercial General Liability Insurance (Occurrence Form CG0001) for bodily
14 injury, personal injury, and broad form property damage, in an amount of not less than One
15 Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not
16 limited to endorsements for the following coverages: personal and advertising injury, premises-
17 operations, products and completed operations, blanket contractual and independent
18 contractor's liability.

19 **C. Automobile Liability Insurance.** Comprehensive Automobile Liability Insurance, both bodily
20 injury and property damage, on owned, hired, leased and non-owned vehicles used in
21 connection with fulfilling the terms of this Agreement in an amount not less than One Million
22 Dollars (\$1,000,000.00) combined single limit coverage per occurrence.

23 **5. ATTORNEYS FEES AND COSTS**

24 If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the
25 prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in
26 addition to any other relief to which such party may be entitled.

27 **6. SEVERABILITY**

28 If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be
29 severable and not affected thereby.

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7. ADHERENCE TO APPLICABLE DISABILITY LAW

The parties to this Agreement shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C Sections 12101, et seq.), California Government Code Sections 12920 et seq., and all related state and local laws.

8. HIPAA COMPLIANCE

The parties to this Agreement will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and will make their best efforts to preserve data integrity and the confidentiality of protected health information.

9. SAFETY RESPONSIBILITIES

The parties to this Agreement will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. All parties agree that in the performance of work under this Agreement, they will provide for the safety needs of their employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

10. JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the law of the State of California, and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. All parties waive any right of removal they might have under California Code of Civil Procedure Section 394.