

AGREEMENT FOR PUBLIC ACCESS FUNDING, CABLECASTING, AND LIVESTREAMING SERVICES

THIS AGREEMENT is made and entered into on September 1, 2020 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and KCAT-TV ("KCAT"), whose address is 20 High School Court, Los Gatos, CA 95030. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 KCAT is a non-profit public access television station that serves the community of Los Gatos and Monte Sereno. KCAT can be viewed via Comcast Channel 15 by roughly 10,000 cable households in Los Gatos and Monte Sereno.
- 1.2 The Town has always supported public access television within its jurisdictional limits and seeks, in this Agreement to provide a more stable funding source to support public, educational, and governmental cablecasting.
- 1.3 The Agreement will serve as a contract with the Town to pay for KCAT services rendered to cablecast and livestream Town Brown Act meetings.
- 1.4 The parties to this Agreement replace and supersede all previous agreements between the parties related to public access television.

II. REPRESENTATIONS AND WARRANTIES OF KCAT

- 2.1 KCAT Status. KCAT shall be an independent contractor and not an agent or employee of the Town. KCAT shall be duly organized, validly existing and in good standing under the laws of the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- 2.2 KCAT Authorization. KCAT has the authority to enter into and perform its obligations under this Agreement. The Board of Directors and KCAT (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of KCAT have the authority to do so.
- 2.3 Equal Employment Opportunity. KCAT warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal opportunity employment. KCAT shall not discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

- 2.4 Compliance with Laws and Regulations. KCAT shall comply with all existing and future Town, County, State, and Federal Laws, including all environmental laws.
- 2.5 Permits and Licenses. KCAT shall procure and maintain in force and effect all necessary governmental permits and licenses and give all notices necessary to the due and lawful performance of the work contemplated herein. KCAT shall pay the currently approved amount for an annual business license to operate in the Town as delineated in the Town code.

III. TERM OF AGREEMENT

- 3.1 Term of Agreement. The effective date of this Agreement shall be September 1, 2020. The term of this agreement shall be for a period of five years, commencing on September 1, 2020 and expiring at midnight on June 30, 2025. The Town shall, at its sole discretion, extend this Agreement on a year to year basis depending on the Town budget appropriations for these services. The terms and conditions of this Agreement, including compensation, shall be applicable during said extension unless the parties mutually agree on any changes.

IV. SCOPE OF AGREEMENT

- 4.1 Scope of Agreement. The Agreement granted to KCAT shall be for the video production of sixty (60) Regular Town Brown Act meetings per year. Production includes cablecast and live streaming services from the Town Council Chambers of, at a minimum:
- Town Council meetings, generally scheduled on the first and third Tuesday of each month,
 - Planning Commission meetings, generally scheduled on the second and fourth Wednesdays of each month, and
 - Pension and OPEB Trusts Oversight Committee meetings as scheduled.

Additional meetings may include special meetings, study sessions, and regular or continued meetings. The Town Manager or their designee shall have the authority to designate a Special Town Brown Act meeting or any other Committee/Board meeting in place of a regular Town Brown Act meeting.

- 4.2 Administration of Agreement. The Town Manager, and/or their designee, shall administer this Agreement and supervise KCAT compliance with the Agreement terms and conditions.
- 4.3 Ownership of Video Recorded Town Brown Act Meetings. All Town Brown Act meetings video recorded and live streamed by KCAT pursuant to this Agreement shall be property of the Town.

V. DIRECT SERVICES

- 5.1 General. The video production work to be done by KCAT pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required, except as provided elsewhere in this Agreement. KCAT shall, at all times during the term of this Agreement, provide quality, efficient, technical and professional service to the reasonable satisfaction of Town and shall perform all work required under this Agreement.
- 5.2 Video Production Schedules. Town shall provide a list of all anticipated regular Town Brown Act meetings, including the dates, times and locations for each meeting. KCAT shall establish schedules for video production of meetings, including set up and take down, and shall notify the Town of said schedules.
- 5.3 Operations and Equipment. KCAT shall be responsible for the management and operation of the video production services provided pursuant to this Agreement, including but not limited to training and meeting-to-meeting supervision of operations. KCAT will provide appropriate technical staff, temporary operators, and an in-chamber assistant trained in the specific aspects of meeting coverage and use of the audio and video systems. Technical staff, temporary operators, and the in-chamber assistant will demonstrate proficiency with all relevant broadcasting equipment.

KCAT will arrange for two (2) alternates to act as temporary operators, if KCAT cannot provide agreed upon services due to illness, emergency, or other reasonable circumstances. The two (2) alternates shall be mutually agreed upon by the KCAT and the Town. Alternates shall be both technically trained and competent to operate the Town's video production equipment. In KCAT's presence, alternates shall work a minimum of one (1) Council Meeting per year, not to exceed six (6) hours per year, per alternate, as training on the Town's video production equipment.

The Town shall provide all equipment necessary at Council Chambers to record Brown Act meetings under this Agreement. KCAT will provide technical consultation for the repair, modification, and upgrade of the Town-owned video production equipment. KCAT shall provide all routine maintenance, repair, and replacement of all cablecasting equipment at the level necessary to permit the equipment to achieve its useful life. This maintenance does not include maintenance of the external cable link between Town Hall and KCAT. Said equipment shall be operated in a safe manner consistent with reasonable industry standards. KCAT will provide initial system checks, 60 (sixty) minutes prior to scheduled meetings to ensure that the video and sound production equipment is performing per specifications.

KCAT shall not use TOWN video broadcasting equipment for any other purpose other than this Agreement, unless written consent is given by the TOWN. Cablecasting and

broadcasting equipment shall be operated at all times by the technical and temporary staff covered in this Agreement.

KCAT will provide gavel to gavel meeting coverage and is responsible for securing the video production equipment room after cablecasting, tape duplication, or other activities.

- 5.4 Livestreaming. KCAT's livestreaming services include streaming the live video to the Town of Los Gatos branded YouTube page during the meeting, archiving the meeting recordings on the YouTube channel for viewing later, on-call engineering services to support technical issues, YouTube channel organization and management, and providing an mpg4 file to Town staff the day after the meeting occurs.

VI. OTHER SERVICES

- 6.1 Playback. KCAT will air previously recorded meetings covered by this agreement on its Community Access Channel (Channel 15/ KCAT) based on its program/schedule availability.
- 6.2 Special Events. KCAT will work cooperatively with Town staff regarding the live cablecast of any additional special events at a mutually agreed upon price, date, and time.
- 6.3 Liaison with Town. KCAT shall maintain an on-going liaison with the Town regarding all video production and insertion point activities, and any matters relating to the performance of this Agreement, including complaints.
- 6.4 Records. KCAT shall maintain a general ledger and detailed books of account showing the receipt and expenditure of all funds received from Town for not less than five (5) years following completion of the work, the receipt of funds and the expenditure of funds under this Agreement. KCAT shall make these records available to authorized personnel of the Town at KCAT's offices during business hours upon written request of the Town.

If an audit conducted by the Town demonstrates inappropriate expenditures of public funds by KCAT, including PEG funds, KCAT shall reimburse said expenditures and restore the funding as may be required. If any audit by Town discloses a discrepancy in allowed expenditures of more than five percent (5%) in any one year, KCAT shall reimburse Town for the cost of the audit, including any staff time contributed to the securing or management of the audit and/or the required follow-up actions.

KCAT shall maintain detailed records and books of account showing the receipt of and expenditure of all PEG Funding and Grant Funding received from Town. KCAT acknowledges that PEG funding is strictly limited to certain expenditures for capital costs, equipment, and facilities.

On or before March 1st of each year, beginning with March 1, 2021, KCAT shall submit a written report and analysis of all funds received from Town in the prior calendar year and a listing of expenditures made with said funds or from the accumulation or interest/investment earnings on said funds. The report shall be submitted to the Town Manager.

- 6.5 Adjustments to Level of Video Production Services. The Town has the right to request additional video production services. Compensation for any additional video production service shall be pursuant to Article 7.1. Similarly, the Town has the right to reduce video production services in the event of budgetary reductions. Any reduction in compensation paid by TOWN would be negotiated and agreed upon by both parties.

VII. KCAT'S COMPENSATION

- 7.1 Compensation. The Town shall compensate KCAT in the amount of **\$60,000 per year** or \$5,000 per month for sixty (60) regular Town Brown Act meetings. This price includes \$48,000 for annual cablecasting services and \$12,000 for annual live streaming services. This price includes set-up, testing, meeting time, transfer time, upload time, data storage fees, television programming, and site management. No overtime will be applicable. The Town Manager shall have the authority to designate a Special Town Brown Act meeting in place of a Regular Town Brown Act meeting.

The Town shall compensate KCAT for meetings exceeding the regular 60 Town Brown Act meetings or Special Meetings designated by the Town Manager at **\$1,000 per meeting**. This price includes \$800 for cablecasting services and \$200 for livestreaming services. Any such meeting above 60 shall be approved in writing by the Town Manager.

The Town will provide written notice to KCAT for additional meetings or cancellations as far in advance as is possible under the circumstances. The Town shall compensate KCAT a \$235 flat fee for the cancelation of any meeting other than the 60 meetings.

KCAT will provide to the Town at no cost, two (2) recordings of all meetings covered by this Agreement on broadcast quality DVD. Recordings of meetings shall be given to the Town for its records. Any additional recording requests by the Town shall be paid a \$20 per DVD duplication for meetings under two hours and \$30 per DVD for meetings over three hours.

At the Town's written request, KCAT will transfer any specified archived meeting recordings (years 2015 – 2018) to the Town-branded YouTube channel for a fee of \$20 per meeting transfer/upload.

The base compensation amount shall be adjusted annually each year beginning July 1, 2021, and will be determined by multiplying the percentage change in the Consumer Price Index for the San Francisco Bay Area, California, USA, as determined by the United States Department of Labor. Any CPI adjustment will be annually calculated on each April 1 to

take effect July 1. The index used shall be the index for the most recent full twelve-month period for which the index is available. Any CPI adjustment can be a decrease as well as an increase based on the above-mentioned index used, not to exceed +/- 3% per year.

- 7.2 Public Access Funding. Town agrees to pay forward to KCAT any PEG funds within fifteen (15) days of receipt by Town. Said funds are to be used for public access television services in Town, provided the expenditure of PEG funds so received shall be made in strict compliance with the law relative to PEG funding, as it may be amended from time to time.

Notwithstanding the obligation to pay forward PEG funds to KCAT, Town shall at all times retain a PEG funds balance received by Town in the amount of \$50,000 and said funds shall be placed in an equipment reserve account. These funds will be made available, as approved by the Town, for major maintenance, replacement or upgrading of the cablecast and related technology resources in the Town Council chambers. When money in the equipment reserve account is spent, it will be replenished by the Town depositing 10% of the PEG funding received until the \$50,000 is reached.

- 7.3 Invoices. KCAT shall submit to the Town by the 15th of each month an invoice for the services provided during the previous month. Said invoice shall indicate at a minimum the work performed during the month and the monthly fee. Recorded meetings for the month invoiced shall be submitted to the Town prior to payment of the invoice. All invoices and statements to the Town shall be addressed as follows (email is the preferable method of delivery):

Invoices:

By email to: AP@losgatosca.gov or

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 7.4 Payments. The Town shall pay monthly within twenty (20) days after receipt of a complete and accurate invoice and submission of the required number of recorded copies for Town meetings.

The Town reserves the right to withhold payment either wholly or partially if said electronically recorded audio/visual meeting content is not provided or if KCAT fails to provide on a consistent basis sufficient qualified personnel for video production activities.

VIII. INDEMNIFICATION, INSURANCE AND BOND

- 8.1 Indemnification. KCAT shall indemnify and hold harmless the Town and its officers, officials, employees and volunteers from and against all claims, damages, losses and

expenses including attorney's fees and litigation expenses arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of KCAT or anyone directly or indirectly employed by KCAT, except where caused by the active negligence, sole negligence, or willful misconduct of the Town. KCAT's duty to indemnify and defend shall survive the expiration or earlier termination of the Agreement.

- 8.2 **Insurance.** Town requirements and such other insurance as required by law and to protect against loss from liability imposed by law for damages on account of bodily injury and property damage. The insurance shall name on the policy, as additional insured, the Town of Los Gatos, its officers, employees and agents. Insurance coverage with a minimum combined single limit in an amount established by the Town Attorney which must be maintained for the duration of this Agreement and the insurance company must provide the Town with thirty (30) days' written notice of cancellation of the policy. Coverage provisions, including limits, shall otherwise be in accordance with Town policy.

Lack of insurance does not negate the KCAT's obligation under this Agreement. KCAT agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, KCAT shall look solely to its insurance for recovery, except where caused by the active negligence, sole negligence, or willful misconduct of the Town. KCAT hereby grants to the Town, on behalf of any insurer providing insurance to either KCAT or Town with respect to the services of KCAT herein, a waiver of any right to subrogation which any such insurer of said KCAT may acquire against the Town by virtue of the payment of any loss under such insurance.

Insurance shall be secured and approved by the Town Attorney prior to commencement of work according to this Agreement.

Maintenance of proper insurance coverage is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the Town as a material breach of Agreement. KCAT shall forward the Town specifications and forms to KCAT for compliance.

IX. DEFAULTS AND REMEDIES

- 9.1 **Events of Default.** All provisions of this Agreement to be performed by KCAT are considered material. Each of the following shall constitute an event of default.

- A. **Fraud or Deceit.** If KCAT practices, or attempts to practice, any fraud or deceit upon the Town.
- B. **Insolvency or Bankruptcy.** If KCAT shall at any time during the term of this Agreement become insolvent, or if proceedings in bankruptcy shall be instituted by or against KCAT, or if KCAT shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of KCAT shall be appointed in any suit or proceeding brought by or against KCAT, or if KCAT shall

make an assignment for the benefit of creditors, then and in each and every such case, TOWN may at its sole discretion immediately terminate this Agreement upon written notice to KCAT and without the necessity of suit or other proceeding and avail itself of any of the various remedies set forth in Article 9.10 herein below or any other remedies provided by law. KCAT shall provide written notice to Town in a timely manner in the event KCAT files for bankruptcy or takes any other action as protection from creditors during the term of this Agreement.

- C. **Failure to Maintain Coverage.** If KCAT fails to provide or maintain in full force and effect the insurance or performance surety requirements pursuant to Article 8.
- D. **Failure to Perform.** If KCAT ceases to provide video production services as required under this Agreement for a period of two (2) meetings, for any reason within the control of KCAT.
- E. **Failure to Provide Recorded Meetings/Records.** If KCAT fails to provide the required number of copies for each Town meeting recorded under this agreement and/or refuses to provide the Town with required information and/or records in a timely manner as provided for in the Agreement.
- F. **Acts or Omissions.** Any other act or omission by KCAT which violates the terms, conditions, or requirements of this Agreement as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of violation or, if KCAT cannot reasonably correct or remedy the breach within the time set forth in such notice, if KCAT should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- G. **False or Misleading Statements.** Any representation or disclosure made to the Town by KCAT in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proved to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

- 9.2 **Breach and Termination.** All terms and conditions of this Agreement are material and binding, and failure by KCAT to perform any portion of the work described herein or any related covenants or agreements shall be considered a breach of this Agreement. In the event this Agreement is breached in any manner, Town may at its sole option terminate this Agreement no less than twenty (20) days after written notice is given to KCAT setting forth the breach and KCAT fails, neglects, or refuses to remedy said breach. KCAT shall thereafter have no further rights, powers, or privileges against Town under or arising out of this Agreement. In the event a breach does not result in termination, but does result in costs being incurred by Town, said costs shall be deducted from any amounts due or to become due to KCAT.

In addition to all other remedies and damages provided by law in the event of a breach of this Agreement, Town may, at its sole discretion, assess the actual damage caused by the

breach as the remedy and obtain said remedy through set-off against KCAT's invoice or by any other appropriate procedure, including but not limited to wholly or partially withholding payment of any amounts billed to Town by KCAT. Town may also provide, directly or through a contract, the services required under this Agreement and deduct actual costs to Town from any amounts due or to become due to KCAT, including but not limited to start-up costs, labor, material, and equipment. The provisions of this Article shall not be exclusive, but shall be cumulative and in addition to any other remedies provided herein or pursuant to law.

In the event Town terminates this Agreement as provided herein, KCAT shall meet all terms and conditions of this Agreement through the effective date of said termination. In the event there is a transition to a different KCAT, KCAT shall cooperate with Town and any successor KCAT the Town may select to provide the services required herein. In the event KCAT fails to comply with the conditions of this paragraph, Town may withhold any compensation due KCAT until KCAT complies.

X. GENERAL PROVISIONS

- 10.1 Relationship of Parties. KCAT shall be an independent contractor and not an agent or employee of TOWN. KCAT shall not represent that KCAT is an agent or employee of Town. KCAT shall not give any person any reason to believe KCAT is an agent or employee of Town. No act of KCAT shall bind or obligate Town.

KCAT assumes full and sole responsibility for the payment of all compensation and all other expenses related to KCAT's personnel, including but not limited to state and federal income taxes, Social Security contributions, workers compensation, and disability and unemployment insurance contributions. KCAT shall be responsible for the payment of all required state and federal taxes. KCAT agrees Town shall not be requested or obligated to withhold from payments to KCAT Social Security contributions or state and federal income taxes.

KCAT and KCAT's employees shall not be entitled to any employment benefits provided by the Town to Town employees. In the event KCAT provides similar benefits to KCAT's employees, KCAT shall be fully responsible for purchasing said benefits separately and independently of the relationship established between Town and KCAT under this Agreement.

- 10.2 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.
- 10.3 No Self Dealing. Due in-part to the public funding provided in this Agreement, no KCAT Board Member may be financially interested in any contract, expenditure, purchase, or grant made by KCAT. KCAT employees are likewise excluded from any financial interest in

any contract, expenditure, purchase, or grant by or from KCAT. For the purpose of this section, financial interest shall be determined pursuant to Government Code 1090, *et. seq.*

- 10.4 Project Manager. The Project Manager for KCAT for the work under this Agreement shall be Melissa Toren, KCAT-TV Executive Director, or an appropriate KCAT-TV Board designee. Town shall designate a Town staff member to serve as a liaison to the Board and who will serve as an ex-officio board member. The ex-officio board member shall be entitled to, but not required to attend all meetings of the Board and be permitted to participate in all discussions, but not vote. The ex-officio member shall receive advance written notice of all meetings of the board.
- 10.5 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to KCAT. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 10.6 Transition to Next Contractor. If the transition of services to another Contractor occurs through expiration of term, default and termination, or otherwise, KCAT will cooperate with TOWN and subsequent Contractor(s) to assist in an orderly transition.
- 10.7 Reservation of Rights. It is hereby expressly agreed by and between the parties hereto that Town shall have, and there is hereby reserved unto Town and to its officers and officials, all rights, powers, and privileges which might be expressly set out in this Agreement in favor of Town and its officers. The express mention of certain rights, powers, and privileges in favor of Town is not intended to and shall not be deemed or construed to exclude any other right, power, or privilege in favor of Town that might be expressly reserved herein.
- 10.8 Non-Waiver. No acquiescence, failure, or neglect of either party to insist upon strict performance of any or all of the provisions of this Agreement shall be construed to constitute a waiver of any term, condition, or provision of this Agreement nor of any performance required hereunder, nor of any remedy, damages, or other liability arising as a result of any failure of performance, neglect, or inability to perform at any time.
- 10.9 Severability. If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 10.10 Survival. Upon the expiration or termination of this Agreement, each party shall be released from all obligations and liabilities to the other occurring or arising after the date of such expiration or termination, except that any expiration or termination of this Agreement shall not relieve KCAT of KCAT's obligations under Articles 8.1, nor shall any such expiration or termination relieve KCAT from any liability arising from any breach of this Agreement.

- 10.11 Waiver of Performance. The parties to this Agreement shall be excused from performance hereunder during the time and to the extent that they are prevented from performing their respective responsibilities by an act of God, fire, strike, lockout, or commandeering of materials, products, plants, or facilities by the state or federal government, when satisfactory evidence therefore is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
- 10.12 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 10.13 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 10.14 Entire Agreement and Notice. This Agreement, together with the Exhibits attached hereto and incorporated herein by reference, contains the full, complete, and entire agreement between the parties and replaces and supersedes all previous agreements, understandings, and arrangements between the parties with respect to the subject matter hereto. This Agreement may not be modified except by written agreement expressly authorized by TOWN and as mutually agreed by the parties. All notices hereunder and communications with respect to this Agreement shall be in writing and shall be effective upon the mailing thereof by registered or certified mail, return receipt requested, and postage prepaid as follows:

To Town:
Town of Los Gatos
Town Manager
110 E. Main Street
Los Gatos, CA 95030

To KCAT:
KCAT-TV Station Manager
20 High School Court
Los Gatos, CA 95030

or personally delivered to KCAT to such address or such other address as KCAT designates in writing to Town.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:

KCAT, by:

Laurel Prevetti, Town Manager

Printed Name and Title

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC
Town Clerk