

*Rio Dell City Hall
675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532
cityofriodell.ca.gov*



August 20, 2024

TO: Rio Dell City Council

FROM: Kyle Knopp, City Manager

SUBJECT: Authorize the City Manager to Sign on Behalf of the City of Rio Dell an Amended Agreement for Cable/Video Services with Access Humboldt

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Authorize the City Manager to execute the agreement.

BACKGROUND AND DISCUSSION

The City of Rio Dell is a partner with the cities of Arcata, Eureka, Blue Lake, Fortuna, Ferndale and the County of Humboldt for services provided by Access Humboldt. For the City, Access Humboldt provides broadcast services for City Council meetings available to cable television subscribers as well as internet video on demand of these services, amongst other services. Otherwise known as "Public, Educational & Government access" or PEG, Access Humboldt also operates a Community Media Center at College of the Redwoods, training and other related services that are free to the individual media creator. The City is already a signatory to this agreement, however, it needs to be updated. The only changes to the agreement relate to dates and updating the name of the cable services provider to the current provider, amongst miscellaneous non-substantive formatting updates. The agreement would be extended into 2030 and the annual cost of \$1,080 to the City would be maintained.

Attachment: Updated agreement with all edits redlined.

///

**CABLE/VIDEO SERVICES AGREEMENT
BY AND BETWEEN
THE CITIES OF ARCATA, EUREKA, BLUE LAKE, FORTUNA, FERNDALE, RIO DELL AND
THE COUNTY OF HUMBOLDT
AND
ACCESS HUMBOLDT
FOR JUNE 2024, FISCAL YEARS 2024-2023-2025-2024 THROUGH 2029-2030**

This Agreement is ~~made entered into this~~ day of , 2024, by and between the Cities of Arcata, Eureka, Blue Lake, Fortuna, Ferndale, Rio Dell and ~~The County of Humboldt (collectively, political subdivisions of the state of California, hereinafter referred to as the "Cities/County,"~~ and Access Humboldt, a California nonprofit corporation, ~~who agree as follows~~ is made upon the following considerations:

WHEREAS, Altice USA operating as Suddenlink Communications (~~collectively "Suddenlink Communications"~~) has been granted a state franchise ("State Franchisee") to provide cable/video services in Arcata, Eureka, Blue Lake, Fortuna, Ferndale, Rio Dell and Humboldt County (~~collectively the "Cities/County"~~) pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") (~~hereinafter the Suddenlink DIVCA franchise~~); and

~~WHEREAS, On August 1, 2022, Suddenlink Communications rebranded as Optimum (collectively, "Optimum"), unifying Altice USA's telecommunications products and services under one brand; and~~

WHEREAS, DIVCA provides that certain channel capacity and fiber links shall be provided for Public Educational and Governmental ("PEG access") access channels; and

WHEREAS, DIVCA authorizes the Cities ~~and~~ County to receive certain grant payments from State Franchisees for PEG access purposes as defined by Section 5870(n) of DIVCA; and

WHEREAS, the Cities and County have each authorized the receipt of such PEG channels, fiber links, and payments via City of Arcata Municipal Code Title VI Chapter 4 Article 5 Section 65.66, City of Blue Lake Municipal Code Title 13 Chapter 13.32.50, City of Eureka Municipal Code Title XI Chapter 114 Section 114.63, City of Ferndale Ordinance 04-04 Chapter 5 Section 5.07, City of Fortuna Municipal Code Title 14 Chapter 14 Section 14.18.050, City of Rio Dell Municipal Code Title 5 Chapter 5.30 Section 5.30.520, and Humboldt County Code Title VIII Chapter 5 Section 855-7; and

WHEREAS, through a community-based effort that included diverse stakeholders and best practice design, Access Humboldt was formed in 2006 to develop and provide PEG access services and to build sustainable community media and broadband access for Humboldt County and the region; and

WHEREAS, by previous agreement, Access Humboldt has provided the Cities/County with PEG access services since May 9, 2006; and

WHEREAS, a Settlement Agreement and Release ("Settlement Agreement") between each of the Cities/County and Suddenlink Communications enacted on or about October 15, 2015 provides that certain payments and services shall be provided by Suddenlink Communications to support the operations of the PEG access facilities, equipment and channels; and

WHEREAS, ~~section~~ Section 14 of the Settlement Agreement states the Agreement shall be binding on Suddenlink Communications and any, voluntary or involuntary successor or assign in whole or in part of: (i) the Suddenlink Communications State Video Franchise as the same may be renewed or extended; or (ii) the cable system controlled by Suddenlink Communications and serving one (1) or more of the

Formatted: No underline, Not Expanded by / Condensed by

Formatted: No underline

Formatted: Indent: First line: 0"

Formatted: Normal, Right: 0"

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Formatted: Font: 12 pt, Not Expanded by / Condensed by

Cities/County; and

~~WHEREAS, through a community-based effort that included diverse stakeholders and best-practice design, Access Humboldt was formed in 2006 to develop and provide PEG access services and to build sustainable community media and broadband access for Humboldt County and the region. By previous agreement Access Humboldt has provided PEG services since May 9, 2006; and~~

Formatted: Indent: First line: 0"

~~WHEREAS, on August 1, 2022, Suddenlink Communications rebranded as Optimum, unifying Altice USA's telecommunications products and services under one brand; and~~

Formatted: Indent: First line: 0"

WHEREAS, the Cities/County have determined that they wish to provide continuing support for PEG access; and

WHEREAS, the Cities/County have designated Access Humboldt to operate and manage PEG access, provide a community media center, to be the recipient of those PEG access channels, funding, and resources, and to provide certain other cable-related services; and

WHEREAS, Access Humboldt has agreed to serve the Cities/County by managing the Community Media Center and providing PEG access programming and services.

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

1. SCOPE OF SERVICES:

Formatted: No underline

In exchange for the resources provided by the Cities/County to Access Humboldt, pursuant to this Agreement, Access Humboldt shall provide the following services:

- A. Operate Public, Educational and Government Access Cable Channels. Operate the public, educational, and government access cable channel(s) for community access programming purposes in accordance with this Agreement and applicable state and federal law, with the primary purpose being to administer, coordinate, and assist those requesting access on a non-discriminatory basis, and to bring to the community local programming and information not otherwise readily available in commercial and national media.
- B. Operate a Community Media Center. Manage a community media production facility and equipment, available for public use at such hours and times as are determined by Access Humboldt. Access to equipment and facilities shall be open to all those who: (1) satisfactorily complete required training classes provided by Access Humboldt; or (2) receive certification from Access Humboldt, identifying said persons as having satisfied training requirements through other means.
- C. Provide Nondiscriminatory Access. Provide access to the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all residents of the Cities/County for non-commercial programming purposes, whether individuals or organizations, pursuant to operating rules promulgated by ~~ACCESS HUMBOLDT~~ Access Humboldt.
- D. 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 Cities/County and shall be provided to any resident of the Cities/County who requests them.
- E. Compliance with Laws Rules and Regulations. Administer the PEG access channels and

facilities in compliance with applicable laws, rules, regulations.

- F. Training. Train residents of the Cities/County and, when requested, employees of the Cities/County and local school or college employees, in the techniques of media production, and provide technical advice in the execution of productions.
- G. Playback/Cablecast. Provide for the playback/cablecasting of programs on the PEG access channels. Access Humboldt shall cablecast an average of at least 20 hours of programming per week.
- H. Maintenance of Equipment. Provide regular maintenance and repair of all equipment purchased with monies received pursuant to this Agreement and/or donated, loaned, or leased to Access Humboldt by the Cities/County.
- I. Special Needs Groups. Support special needs groups in program production through training and other means.
- J. Promotion. Actively promote the use and benefits of the PEG access channels and facilities to cable subscribers, the public, PEG access users, and the State Franchisee.
- K. Cable-Related Services. Provide cable/video and broadband related services that assist the Cities/County in oversight of cable/video service providers as further described in Section 2.
- L.

Formatted: Normal

Performance Review. Every four (4) years Access Humboldt shall contract with an entity from outside the Cities/County that is expert in PEG access matters to conduct a performance review of Access Humboldt's operations. 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 each of the Cities/County.

M. Other Activities. Undertake other PEG access programming activities and services as deemed appropriate by Access Humboldt and consistent with the obligation to facilitate and promote PEG access programming and provide non-discriminatory access.

2. CABLE/VIDEO AND BROADBAND-RELATED SERVICES:

Access Humboldt shall provide the following cable/video related services:

- A. Regularly conduct reviews of files maintained by Optimum to ensure adequate, timely reporting and to identify any outstanding issues. Notify the Cities/County of any problems or issues identified and provide suggestions as to ways to resolve said problems.
- B. Conduct an annual workshop for elected officials and designated City/County staff regarding DIVCA, applicable Public Utilities Commission Rules, and the cable/broadband industry as it may apply to current and potential services and issues of interest to the Cities/County.
- C. Hold regular meetings with Optimum during the term of this Agreement to maintain open lines of communications.
- D. Support "helpline" services for the Cities/County to help document and address residents' complaints or problems that require intervention with Optimum. Assist City/County staff and elected officials in preparing necessary communication residents regarding Optimum and operations and performance in the Cities and County.
- E. Conduct regular franchise and PEG fee audits as permitted by DIVCA They shall include but not be limited to the following activities.
 - 1. Retain the assistance of a firm expert in the conduct of cable franchise and PEG fee audits/financial reviews.
 - 2. Prepare a detailed Request for Information ("RFI") to be sent to Optimum seeking information necessary to determine the exact basis of franchise and PEG fee payments.
 - a. The exact basis for the current franchise fee payment will be identified by reviewing the State Franchise agreement and applicable state rules and regulations, previous audit results, any correspondence concerning payments, and actual receipt dates and manner in which such is recorded.
 - b. A detailed RFI will be prepared to be sent to Optimum to clarify the following:
 - i. Subscriber billing and collection system.
 - ii. Listing of all Cities/County jurisdictions included in same general ledger.
 - iii. Accounting procedures applied to subscriber & non-subscriber revenue.

iv.

Accounting policies related to bad debt.

- v. Allocations procedures for allocating revenue among the Cities/County.
- vi. Revenue sources that are currently excluded from the computation and the operator's rationale for such exclusion.
- vii. Reporting of affiliated transactions.
- viii. Reporting of programmer receipts for launch fees and other promotions.
- ix. Reporting of local, regional, and/or national advertising (gross or net).
- x. Reporting and treatment of Internet access revenue if billing is combined (discounts applied).
- xi. Request to review books or original entry on site.
- xii. Review of programmers' contracts on site to understand rebates and advertising.
- xiii. Map of service areas with outlying roadways identified.
- xiv. Copies of internal financial reports that include the system operations.

F. Revenue reports and other correspondence submitted by Optimum to the Cities/County will be evaluated for accuracy as well as the type of information that is presented as follows:

- 1. Reconcile Optimum's reported revenue to the franchise fee payments received.
- 2. Understand Optimum's use of the "Pasadena pass-through."
- 3. Understand the extent to which agreements with programmers provide for advertising and how such advertising is treated for financial reporting purposes.
- 4. Conduct a review of Optimum's ledgers, journals, and workpapers to test the accuracy of calculations made by the operator, paying particular attention to deductions made to specific revenue.
- 5. Clarify with representatives from Optimum any issues arising from review of the franchise fee payments.

G. Determine whether payments are correct and have been paid in a manner consistent with DIVCA. Assist the Cities/County in collecting any underpaid franchise and PEG fees.

H. Monitor Optimum's compliance with the Settlement Agreement and Release date on or about October 15, 2015 and immediately notify the Cities/County of any violations of that Agreement.

3. PUBLIC ACCESS CHANNELS OPEN TO PUBLIC:

Access Humboldt hereby 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 the

Cities/County, the

Franchisee, nor Access Humboldt shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Nothing herein shall prevent Access Humboldt, any of the Cities/County, or the Franchisee from producing or sponsoring programming, underwriting programming, or 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). Access Humboldt 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.

4. INDEMNIFICATION:

- A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other parties and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities costs and expenses of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other parties or their agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that multiple parties are held to be negligently or willfully responsible, each party will bear its proportionate share of liability as determined in any such proceeding. In such cases, each party will bear its own costs and attorneys' fees.
- C. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve any party from liability under this provision. This provision shall apply to all claims for damages related to each party's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

5. COPYRIGHT CLEARANCE:

Before cablecasting any program material, Access Humboldt shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast 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 Access Humboldt. Access Humboldt shall maintain for inspection by any of the Cities/County, upon reasonable notice by the Cities/County and for the term of the applicable statute of limitations, copies of all such user agreements.

6. COPYRIGHT AND OWNERSHIP:

Access Humboldt 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.

7. DISTRIBUTION RIGHTS:

- A. Access Humboldt shall require that 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 least twice each day that programming is cablecast on the PEG access channels whose use is authorized by this Agreement, Access Humboldt shall display a credit stating "Partial funding for the operation of this channel is provided by the Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Humboldt County. Such credit shall also state that opinions expressed in PEG access programs are the sole responsibility of the program producers.

8. EQUIPMENT AND FACILITIES:

- A. Access Humboldt shall be responsible for maintenance of all equipment and facilities owned, leased, loaned to it, or purchased with funds provided pursuant to this Agreement.
- B. Access Humboldt shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the Cities/County (in a manner determined by the Cities/County), which shall ensure that all such equipment or facilities shall be used for PEG access purposes. To secure all of its obligations under this Agreement, Access Humboldt hereby grants to each of the Cities/County a security interest in the assets and interests owned or hereafter acquired by Access Humboldt with funds provided by the Cities/County, and the proceeds thereof, including but not limited to Access Humboldt deposit accounts, inventory, and all equipment and fixtures acquired with funds provided by the Cities/County. Access Humboldt hereby agrees to take all steps reasonably requested by any of the Cities/County to perfect and enforce the security interest of the Cities/County, including the execution and processing of financing statements and continuation statements under the California Uniform Commercial Code. Access Humboldt will also notify any institution with whom it now or hereafter maintains any deposit account of the existence of a security interest by the Cities/County in the account.
- C. The Cities/County hereby agree to subordinate their interest if necessary to finance the purchase of equipment or property. The subordination shall only be with respect to the specific equipment or property that Access Humboldt might wish to finance.
- D. Upon the dissolution of Access Humboldt, it shall, subject to the approval of the Cities/County, transfer all assets of Access Humboldt representing equipment and facilities funded by the Cities/County, and/or the proceeds of either to the Cities/County, or at the option of the Cities/County, to such organization or organizations designated by the Cities/County 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).

9. INSURANCE:

Access Humboldt shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by Access Humboldt and may be included in its annual budget.

- A. Comprehensive Liability Insurance. Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury

coverage, 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, \$2,000,000 for each person, each occurrence and aggregate; and (2) property damage, \$2,000,000 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~~ pursuant to the terms and conditions of 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 Cities/County shall be shown as additional insured 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 Cities/County. The worker's compensation policy shall contain, or be endorsed to contain, a waiver of subrogation clause indicating the insurance company agrees to waive all right of subrogation against the Cities/County, their officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the Cities/County or from operations performed by the Named insured on Cities/County premises.
- 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. Cities/County as Co-Insured or Additional Insured. All Cities/County shall be named as co-insured or additional insured on all aforementioned insurance policies. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or Access Humboldt without first giving each of the Cities/County 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 Cities/County, their officers, agents, employees, or volunteers shall be in excess of Access Humboldt's insurance and shall not contribute to it.
- F. Notification of Coverage. Access Humboldt shall annually file with the Cities/County proof of Comprehensive Liability, Workers' Compensation, equipment, and cablecaster's errors and omissions insurance.
- G. Other Insurance Requirements. The Cities/County or its authorized representative or agents shall have the right to require additional insurance, or high limits of insurance, at anytime during this Agreement should it be deemed necessary. The general liability policy is to contain, or be endorsed to contain the following provisions:
 - 1. The Cities/County, their officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of ownership, maintenance or use of that part of the area in use by Access Humboldt pursuant to this Agreement.
 - 2. Access Humboldt insurance coverage shall be primary insurance as respects the Cities/County, their officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Cities/County, its officers, officials, employees or volunteers shall be excess of Access Humboldt's insurance and shall not contribute with it.

10. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE:

Formatted: No underline

A. Professional Services and Employment. In connection with the execution of this Agreement, Access Humboldt shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.

B. Compliance with Anti-Discrimination Laws. Access Humboldt further assures that it will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

11. INDEPENDENT CONTRACTOR:

It is hereby understood and agreed that Access Humboldt is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Cities/County and Access Humboldt. If in the performance of this Agreement any third persons are employed by Access Humboldt, such persons shall be entirely and exclusively under the control, direction and supervision of Access Humboldt. All terms of employment, including hours, wages, employee benefits, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by Access Humboldt and the Cities/County shall have no right or authority over such persons or terms of employment. No third party shall be a beneficiary under this Agreement.

12. ASSIGNMENT OR TRANSFER:

Neither this Agreement nor any interest herein shall be assigned or transferred by Access Humboldt, except as expressly authorized in writing by the Cities/County.

13. ANNUAL REPORTS:

Prior to June 30 of each year, Access Humboldt shall submit to the Cities/County an annual report regarding its activities during the preceding calendar year (January 1 - December 31). This report shall contain, at a minimum, statistics on programming and services provided, a current and complete list of Access Humboldt's Board of Directors, and year-end financial statements that have been reviewed by an independent certified public accountant.

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

14. RECORD RETENTION AND INSPECTION:

Formatted: No underline

- A. Maintenance and Preservation of Records. Access Humboldt hereby agrees to timely prepare accurate and complete financial and performance records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.
- B. Inspection of Records. Access Humboldt hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by Cities/County and any other duly authorized local, state and/or federal agencies. Access Humboldt further agrees to allow interviews of any of its employees who might reasonably have information related to such records by Cities/County and any other duly authorized local, state and/or federal agencies. Any and all examinations and audits conducted hereunder shall be strictly confined to those matters connected with Access Humboldt's performance hereunder.
- C. Audits. Access Humboldt shall prepare (or have prepared) and submit to the Cities/County a fiscal audit by an independent certified public accountant, at least every three (3) years.

15. PEG ACCESS FUNDING, CHANNELS, AND OTHER RESOURCES:

Pursuant to the following City and County Code citations, certain PEG access funds, channels, and resources are to be provided to the Cities/County by Optimum and any entity issued a State Video Franchise. The Cities/County do by this Agreement transfer those funds, channels, and resources as delineated in the Cities/County Code to Access Humboldt for the purposes described in this Agreement.

- A. The California Public Utilities Commission has granted Optimum a State Franchise to provide cable/video services in the Cities/County. Pursuant to its State Franchise and City of Arcata Municipal Code Title VI Chapter 4 Article 5 Section 65.66, City of Blue Lake Municipal Code Title 13 Chapter 13.32.50, City of Eureka Municipal Code Title XI Chapter 114 Section 114.63, City of Ferndale Ordinance 04-04 Chapter 5 Section 5.07, City of Fortuna Municipal Code Title 14 Chapter 14 Section 14.18.050, City of Rio Dell Municipal Code Title 5 Chapter 5.30 Section 5.30.520, and Humboldt County Code Title VIII Chapter 5 Section 855-7 Optimum is obligated to provide to the Cities/County four channels for PEG access purposes. The Cities/County hereby agrees to permit Access Humboldt to manage that bandwidth/channel capacity for PEG access programming purposes.
- B. Pursuant to its State Franchises and to City of Arcata Municipal Code Title VI Chapter 4 Article 5 Section 65.66, City of Blue Lake Municipal Code Title 13 Chapter 13.32.50, City of Eureka Municipal Code Title XI Chapter 114 Section 114.63, City of Ferndale Ordinance 04-04 Chapter 5 Section 5.07, City of Fortuna Municipal Code Title 14 Chapter 14 Section 14.18.050, City of Rio Dell Municipal Code Title 5 Chapter 5.30 Section 5.30.520, and Humboldt County Code Title VIII Chapter 5 Section 855-7 Optimum is obligated to provide to the Cities/County for PEG access purposes 1.401% of gross of its gross revenues derived from the provision of cable/video services in the Cities/County. The Cities/County shall direct any State Franchisee to pay said PEG fees to Access Humboldt no later than thirty (30) days after the Cities/County receives the quarterly PEG fee payment from a State Franchisee.
- C. The Cities/County shall provide Access Humboldt at the flat rate of thirty-six thousand dollars (\$36,000.00) per year during the term of this Agreement for providing the cable/video services

described in Section 2 of this Agreement. Each of the Cities/County shall be responsible to pay a share of the total annual cost, allocated as follows: County of Humboldt, eighteen thousand eight hundred forty dollars (\$18,840.00) annually; City of Arcata, four thousand eight hundred sixty dollars (\$4,860.00) annually; City of Blue Lake, four hundred fifty dollars (\$450.00) annually; City of Eureka, eight thousand eight hundred twenty dollars (\$8,820.00) annually; City of Ferndale, seven hundred twenty dollars (\$720.00) annually; City of Fortuna, four thousand two hundred thirty dollars (\$4,230.00) annually; City of Rio Dell, one thousand eighty dollars (\$1,080.00) annually.

1. Access Humboldt shall submit quarterly invoices to each of the Cities/County on the first day of April, July, October, and January and the Cities/County shall each pay the amount due in full within thirty (30) days of the invoice date.
2. Any material changes to the compensation for cable/video services to be performed by Access Humboldt or additional services requested by the Cities/County shall have the prior written approval of Access Humboldt and the Cities/County.

16. ANNUAL PLAN AND BUDGET:

On or before December 31 of each year in which this Agreement is in effect, Access Humboldt shall provide to the Cities/County an "Annual Plan and Budget" outlining activities and programs planned for the following fiscal year with funds and other resources provided by the Cities/County. Such plan shall include a statement of the anticipated number of hours of PEG access programming to be cablecast, the training classes to be offered and the frequency thereof, any other PEG access activities planned by Access Humboldt, and a detailed operating and capital equipment and facilities budget.

17. EXPENDITURE OF FUNDS:

Access Humboldt shall spend funds received from the Cities/County for the purposes listed in its Annual Plan and Budget and Section 1 ("Scope of Services") of this Agreement. Funds not expended in the year covered by the Annual Plan and Budget may be carried over by Access Humboldt into succeeding years. Upon termination of this Agreement all funds of any kind received from the Cities/County not expended by Access Humboldt shall be returned to the Cities/County, in proportion to the amounts previously provided by the Cities/County. All such returned funds shall be used by the Cities/County for PEG access purposes. Access Humboldt shall implement any and all fiscal control and accounting procedures necessary to assure proper disbursement and accounting for funds received from the Cities/County.

////

18. RECEIPT OF APPROVED FUNDING:

The Cities/County codes require holders of state issued video franchises to pay to the Cities/County certain funds for PEG ~~Support access services~~ (see Cities/County code citations in Section 15). For each year in which Access Humboldt has submitted the Annual Plan and Budget to the Cities/County as required ~~under pursuant to the terms and conditions of~~ this Agreement, the Cities/County shall direct all state video franchise holders to make quarterly payments to Access Humboldt on or before February 15, May 15, August 15, and November 15.

19. FUNDING FROM OTHER SOURCES:

Access Humboldt may, during the course of this Agreement, receive supplemental funds from other sources, including ~~but not limited to~~, without limitation, fundraising activities.

Formatted: Indent: Left: 0"

///

20. TERMINATION OF AGREEMENT AND TRANSFER OF ASSETS:

Formatted: Condensed by 0.5 pt

Formatted: No underline

- A. The Cities/County shall have the right upon one hundred twenty (120) days written notice to Access Humboldt to terminate this Agreement for: material breach of any provision of this Agreement by Access Humboldt; malfeasance, misfeasance, or misappropriation of funds by Access Humboldt; or loss of 501(c) (3) status by Access Humboldt or revocation or suspension of its Articles of Incorporation by the State of California.
- B. Access Humboldt may avoid termination by curing any such breach to the satisfaction of the Cities/County within one hundred twenty (120) days of notification or within a time frame mutually agreed to by the Cities/County and Access Humboldt. The Cities/County may also terminate this Agreement at the expiration of its term, or any extension thereof.
- C. Upon termination of this Agreement, Access Humboldt shall immediately transfer to the Cities/County all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by Access Humboldt with funds received pursuant to this Agreement. All such transferred items shall be used by the Cities/County for PEG access purposes.

21. TERM AND EXTENSION OF AGREEMENT:

This Agreement shall ~~be for a period of five (5) years, commencing begin~~ on June 1, 2024 and ~~ending~~ onshall remain in full force and effect until June 30, 2030, unless renewed, extended or sooner terminated as set forth herein. This Agreement may be renewed or extended for additional periods of not less than five (5) years each, pursuant to the following process:

- A. If Access Humboldt seeks an extension, it shall submit a letter of request to each of the Cities/County at least one hundred twenty (120) days prior to the expiration of this Agreement.
- B. The City Managers/County ~~CAO-Administrative Officer~~ shall jointly respond to Access Humboldt's letter of request for an extension of ~~the this~~ Agreement within thirty (30) days of the date of said letter. If the Cities/County intend to refuse to extend the Agreement, they shall explain the reasons for this decision in their response to Access Humboldt. The Cities/County may not refuse to extend ~~the contract this Agreement~~ based upon a failure of Access Humboldt to comply with the terms ~~of this Agreement and conditions set forth herein~~ unless the Cities/County have provided Access Humboldt a notice of ~~its such~~ failure ~~to comply with the terms~~ and the opportunity to cure said noncompliance.

///

22. TIME:

Formatted: Indent: Left: 0", First line: 0", Tab stops: Not at 0.75"

Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement. Each party hereby agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement in a timely manner.

23. AMENDMENT:

This Agreement may be amended at any time during the term ~~of this Agreement thereof~~ upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

24. APPLICABLE LAW:

This Agreement shall be interpreted and enforced under the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue

shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

25. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing. Any party may change its address by providing the other parties written notice in accordance with the notice requirements set forth herein.

CITY OF ARCATA:	City of Arcata Attention: Merritt Perry, City Manager 736 F Street Arcata, CA <u>California</u> 95521
CITY OF FERNDALE:	City of Ferndale Attention: Jay Parrish, City Manager P.O. Box 1095 Ferndale, California 95536
CITY OF BLUE LAKE:	City of Blue Lake Attention: Amanda Mager, City Manager P.O. Box 458 Blue Lake, California 95525
CITY OF RIO DELL:	City of Rio Dell Attention: Kyle Knopp, City Manager 675 Wildwood Avenue Rio Dell, California 95562
CITY OF EUREKA:	City of Eureka Attention: Miles Slattery, City Manager 531 K Street Eureka, California 95501
CITY OF FORTUNA:	City of Fortuna Attention: Amy Nilsen, Interim City Manager 621 Eleventh Street Fortuna, California 95540
COUNTY OF HUMBOLDT:	County of Humboldt Attention: Elishia Hayes, County Administrative Officer 825 Fifth Street Eureka, California 95501
ACCESS HUMBOLDT:	Access Humboldt Attention: Sean McLaughlin, Executive Director P.O. Box 157 Eureka, California 95502

26. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 4 – Indemnification and Section 14 – Record Retention and Inspection shall survive the expiration or termination of this Agreement.

27. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

28. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by each of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

29. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

30. FORCE MAJEURE:

No party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

31. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

32. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

33. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

Formatted: Indent: Left: 0.38"

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

Formatted: Indent: Left: 0"

CITY OF ARCATA:

By: _____
Merritt Perry, City Manager

Date: _____

CITY OF FERNDALE:

By: _____
Jay Parrish, City Manager

Date: _____

CITY OF BLUE LAKE:

By: _____
_____ Amanda Mager, City Manager

Date: _____

Formatted: Tab stops: 4.58", Left

CITY OF RIO DELL:

By: _____

_____ Kyle Knopp, City Manager

Date: _____

Formatted: Normal, Tab stops: 4.98", Left

CITY OF EUREKA:

By: _____

_____ Miles Slattery, City Manager

Date: _____

Formatted: Normal, Tab stops: 4.98", Left

CITY OF FORTUNA:

By: _____

_____ Amy Nilsen, Interim City Manager

Date: _____

Formatted: Normal, Tab stops: 4.98", Left

[Signatures Continued on Next Page]

COUNTY OF HUMBOLDT:

By: _____

Date: _____

Elishia Hayes
Acting County Administrative Officer

ACCESS HUMBOLDT:

By: _____

Date: _____

Sean McLaughlin, Executive Director

Formatted: Indent: First line: 0"

Formatted: Tab stops: 3.65", Left + 4.58", Left + 7.18", Left

Formatted: Indent: First line: 0"